EXHIBIT G

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 20-30663-WAK
	.	
THE ROMAN CATHOLIC	.	100 S. Clinton Street
DIOCESE OF SYRACUSE,	.	Syracuse, NY 13261
NEW YORK,	.	
Debtor.	.	November 7, 2024
. . . . .	.	10:26 a.m.

TRANSCRIPT OF HEARING ON:

DOC. NO. 859 - SECTION 105(a) STATUS CONFERENCE

DOC. NO. 204 - MOTION SEEKING AUTHORITY PURSUANT TO RULE 2004 TO SUBPOENA DOCUMENTS AND TESTIMONY FILED BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS (MERRITT LOCKE)

DOC. NO. 2178 - MOTION FOR ENTRY OF AN ORDER APPROVING DISCLOSURE STATEMENT; APPROVING SOLICITATION PACKAGES AND DISTRIBUTION PROCEDURES; APPROVING THE FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON FOURTH AMENDED JOINT PLAN AND CONSENTING TO THIRD PARTY RELEASES; APPROVING THE FORM, MANNER AND SCOPE OF CONFIRMATION NOTICES; ESTABLISHING CERTAIN DEADLINES IN CONNECTION WITH APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF FOURTH AMENDED JOINT PLAN; AND GRANTING RELATED RELIEF FILED BY THE ROMAN CATHOLIC DIOCESE OF SYRACUSE, NEW YORK (STEPHEN DONATO)

DOC# 1027 - MOTION AUTHORIZING THE COMMITTEE TO SUBPOENA THE PRODUCTION OF DOCUMENTS FILED BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS (ROBERT KUGLER)

DOC# 2011 - MOTION TO SEAL AND/OR REDACT CERTAIN INFORMATION CONTAINED IN OBJECTIONS TO ABUSE PROOFS OF CLAIM FILED BY LONDON MARKET INSURERS (RUSSELL ROTEN)

(Continued)

BEFORE HONORABLE WENDY A. KINSELLA
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Continued)

DOC# 2014 - MOTION TO COMPEL THE ATTORNEYS REPRESENTING THE TORT CLAIMANTS TO SUBMIT THE DISCLOSURES REQUIRED BY FEDERAL RULE OF BANKRUPTCY PROCEDURE 2019 FILED BY LONDON MARKET INSURERS

DOC# 2086 - SECTION 105(A) HEARING ON ORAL ARGUMENT RE: TRUCK INSURANCE EXCHANGE V. KAISER GYPSUM, CO., INC.

DOC# 2018 - MOTION TO STRIKE LONDON MARKET INSURERS MOTION TO SEAL AND/OR REDACT CERTAIN INFORMATION CONTAINED IN OBJECTIONS TO ABUSE PROOFS OF CLAIM 2011 FILED BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS (ROBERT KUGLER)

DOC# 297 — SECTION 105(A) CONFERENCE

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APPEARANCES:

For the Debtor:	Bond Schoeneck & King, PLLC By: STEPHEN DONATO, ESQ. CHARLES J. SULLIVAN, ESQ. GRAYSON WALTER, ESQ. SARA TEMES, ESQ. BRENDAN SHEEHAN, ESQ. One Lincoln Center Syracuse, NY 13202 Blank Rome LLP By: JAMES S. CARTER, ESQ. 1825 Eye Street NW Washington, D.C. 20006
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For London Market Insurers:	Duane Morris LLP By: RUSSELL ROTEN, ESQ. NATHAN REINHARDT, ESQ. 865 S. Figueroa Street, Suite 3100 Los Angeles, CA 90017 Clyde & Co US LLP By: CATALINA J. SUGAYAN, ESQ. 55 West Monroe Street, Suite 3000 Chicago, IL 60603
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For TIG Insurance Company:	Kennedys CMK LLP By: JILLIAN G. DENNEHY, ESQ. 120 Mountain View Boulevard Basking Ridge, NJ 07920
For Catholic Mutual Relief Society of America:	ArentFox Schiff LLP By: BRETT D. GOODMAN, ESQ. 1301 Avenue of the Americas, 42nd Fl. New York, NY 10019
For Hanover Insurance Company:	Rivkin Radler LLP By: BRIAN R. ADE, ESQ. 25 Main Street Court Plaza North, Suite 501 Hackensack, NJ 07601
For Utica Mutual Insurance Company:	Rivkin Radler LLP By: STUART I. GORDON, ESQ. 926 RXR Plaza Uniondale, NY 11556

APPEARANCES (CONT'D):

For Merchants Mutual Insurance Company:	Hurwitz & Fine PC By: BRIAN D. BARNAS, ESQ. 1300 Liberty Building Buffalo, NY 14202
ECRO:	Rachel Sugrue

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THE CLERK: (In progress) 10:00 a.m. calendar, Case 20-30663, the Roman Catholic Diocese of Syracuse, New York. We have several matters on the calendar. Docket 859, Section 105, status conference; Docket 204, motion seeking authority pursuant to Rule 2004 to subpoena documents and testimony; Document 2178, motion for entry of an order approving disclosure statement, approving solicitation packages and distribution procedures; Docket 1027, motion authorizing the Committee to subpoena the production of documents; Docket 2011, motion to seal and/or redact certain information contained in objections to abuse proofs of claim; Docket 2014, motion to compel the attorneys representing the Tort Claimants to submit the disclosures; Docket 2086, Section 105(a) hearing on oral argument regarding Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.; Docket 2018, motion to strike London Market Insurers motion to seal and/or redact certain information contained in objections; Docket 297, Section 105(a) conference.

Please note your appearances for the record.

MR. DONATO: Good morning, Your Honor. Steve Donato, Charles Sullivan, Sara Temes, Grayson Walter, and Brendan Sheehan are here on behalf of the Diocese of Syracuse. We're all from Bond, Schoeneck & King. On the phone is James Carter from Blank Rome. As you know, he is our special insurance counsel. Also, we have the Diocese Chancellor and CFO and the

Bishop here in the courtroom today.

I'm not sure how you want to proceed, but we're going to break this up a little bit. And so if there's discovery issues, Brendan Sheehan is going to address that. When we get into the actual arguments in regard to the balloting soliciting issues raised by the U.S. Trustee, Mr. Walter will address that. And then I'll handle the rest of it.

So just wanted the Court to be aware of that.

THE COURT: Thank you, Mr. Donato.

MR. DONATO: Thank you.

MR. KUGLER: Good morning, Your Honor. Robert Kugler from Stinson on behalf of the Committee. With me today is my partner, Ed Caldie, my partner, Drew Glasnovich, and our associate, Logan Kugler. Also present in the courtroom is our Committee Chair, Dr. Kevin Braney. Also present on the phone is Committee member Chris Simons. We also will be splitting up duties today, and so you'll see various of us popping up at various points in the motions.

THE COURT: Thank you, Mr. Kugler. Good morning.

MR. KUGLER: Thank you, Your Honor.

MS. CHAMPION: Good morning, Your Honor. Erin Champion for the United States Trustee. Here with me in the courtroom are my colleagues, Joseph Allen, the Assistant United States Trustee in the Buffalo office, and Lisa Penpraze, the Assistant United States Trustee in Albany. I will be covering

all of today's arguments and they're here for moral support.

Thank you.

THE COURT: Thank you.

(Laughter)

MR. WINSBERG: Good morning, Your Honor. Harris Winsberg, Parker, Hudson, Rayner, and Dobbs on behalf of Interstate, and I believe Mr. Jacobs is on the phone as well.

Thank you.

THE COURT: Good morning.

MR. WINSBERG: Good morning.

MR. ROTEN: Good morning, Your Honor.

MR. BANKER: Good morning, Your Honor. David Banker, Womble Bond, on behalf of National Catholic Risk Retention Group.

THE COURT: I'm sorry, sir. We're still taking appearances in Court, and then we'll turn to the phone. If you could just hold on for just another couple of minutes, please.

MR. ROTEN: Good morning, Your Honor.

MR. BANKER: Thank you, Your Honor.

THE COURT: Thank you.

MR. ROTEN: Russell Roten from Duane Morris representing the London Market Insurers. Nate Reinhardt is here with me today. Cathy Sugayan from Clyde & Co. is on the phone. She handles the insurance issues. I'll be dealing with the disclosure statement issues and Mr. Reinhardt will be

dealing with the other two matters that affect us.

Good morning.

THE COURT: Thank you. Good morning.

Other appearances in the courtroom?

MR. ELSAESSER: Good morning, Your Honor. Ford Elsaesser along with Timothy Lyster for the parishes and schools and other affiliates.

THE COURT: Good morning, Mr. Elsaesser.

MR. BAIR: Good morning, Your Honor. Jesse Bair from Burns Bair, special insurance counsel for the Committee.

THE COURT: Good morning.

MS. LaFAVE: Good morning, Your Honor. Cynthia LaFave, LaFave, Wein & Frament. I work with Jeff Anderson & Associates. We represent a number of the survivors who have brought claims against the Diocese.

Thank you.

THE COURT: Good morning.

MR. FINNEGAN: Good morning, Your Honor. Mike Finnegan with Jeff Anderson & Associates. And also on the phone with us is Taylor Sloan, and with Ms. LaFave, we represent a number of abuse survivors in this case.

THE COURT: Good morning.

MR. FINNEGAN: Good morning.

THE COURT: Any other appearances in the courtroom?

(No audible response)

THE COURT: Hearing none, we'll now move on to the appearances on the telephone.

MR. BANKER: Good morning, Your Honor. David Banker, Womble Bond, on behalf of National Catholic Risk Retention Group.

THE COURT: Good morning.

MR. BANKER: Thank you, Your Honor.

MS. RUBEN: Good morning, Your Honor.

MR. WEINBERG: Good morning, Your Honor. Joshua Weinberg -- sorry.

Good morning, Your Honor. Joshua Weinberg, on behalf of Hartford Fire Insurance Company.

THE COURT: Good morning.

MS. RUBEN: Good morning, Your Honor. This is Samantha Ruben from Dentons on behalf of Travelers.

THE COURT: Good morning.

MS. DENNEHY: Good morning, Your Honor. This is Jill Dennehy on behalf of TIG Insurance Company.

THE COURT: Good morning.

MR. ADE: Good morning, Your Honor.

MR. GOODMAN: Good morning, Your Honor. Brett Goodman, ArentFox --

MR. ADE: Brian Ade, Rivkin Radler. And I'm sorry, go ahead.

MR. GOODMAN: Good morning, Your Honor. Brett

Goodman, ArentFox Schiff, for Catholic Mutual.

THE COURT: Good morning.

MR. ADE: Good morning, Your Honor. This is Brian Ade, Rivkin Radler. I represent Hanover Insurance Company.

THE COURT: Good morning.

MR. GORDON: Good morning, Your Honor. Stuart Gordon, Rivkin Radler, on behalf of Utica Mutual Insurance Company.

THE COURT: Good morning, Counselor.

MR. BARNAS: Good morning, Your Honor. Brian Barnas from Hurwitz Fine for Merchants Insurance.

THE COURT: Good morning.

Any other appearances on the phone?

(No audible response)

THE COURT: Hearing none, before we get started, Mr. Donato, the Court wants to thank everyone for their patience and apologize for the technical difficulties. I always try to be very respectful of everyone's time and obviously tried to move to a different courtroom that has different recording capabilities. They usually have a stenographer. We need recording. So we ran into a little glitch today. I apologize for the delay and the movement.

But with that said, why don't we get started?

MR. DONATO: Thank you, Your Honor.

Obviously, there's many motions before you today. I

don't know if we should seek to dispense or dispose with some of those motions. The main event, of course, is the disclosure statement, which we're prepared to argue.

Do you have a preference? Do you want to go over the calendar? I think there are some things that have just been carried.

THE COURT: There are a few things that have been carried. Why don't we start with the general 105(a), Mr. Donato. You can give the Court any update on anything and then we can move into some of the other things that I think just need to be adjourned.

MR. DONATO: Absolutely.

So, as far as updates, the primary update, besides the thousands of pages of papers that everybody's filed and been reviewing and arguing, is that the mediators are up and running. So the mediators have already had some sessions. They've been not in person or anything, but sessions with us.

I understand they've had sessions with carriers, the Committee, et cetera. So we're pleased that that process is moving. I did communicate with the mediators yesterday to just get an idea of where we are, and I told them that we were hoping to have a confirmation hearing during the latter part of January.

They indicated that they understood that time frame. They thought that that was okay, meaning that they would be

able to get in-person sessions and try to move this thing along. We understand there's a tension here. Obviously, we're anxious to try to get this case resolved. It's been a long time.

The survivors at this stage have been extremely patient. But I understand, if we can solve something through mediation, we might remove half the people in this courtroom who are trying to block us moving forward. So we fully understand that. We're fully committed. And I think all the parties are. So I wanted to update you on that piece.

Besides that, I don't think there's much to update besides everything that's before you today.

THE COURT: Thank you.

Did anyone else wish to add anything to that brief overview?

(No audible response)

THE COURT: Okay. Hearing none, why don't we dispense of the 2004 exams? I believe we have Docket 204, which was the motion seeking authority pursuant to Rule 2004 to subpoena documents and testimony filed by the Committee. And I think we have the corresponding motion authorizing the Committee to subpoena the production of documents filed by the Committee.

Mr. Kugler, are you able to advise the Court? Are those, I assume, being adjourned?

MR. KUGLER: Yes. Yeah, I think that's the right thing to do is adjourn both of those. Time frame, I guess I'm not sure. It kind of depends what time frames get set today, but I think that corresponding with whatever time frames get set today, they would be mooted, obviously, by a confirmed plan. So we could adjourn it until after a proposed confirmation date once that's determined.

THE COURT: Why don't we adjourn those out to January 16th at one o'clock, just as a control date, and then we'll see where we stand at that point. So Docket 204 and Docket 1027 are adjourned. That's a regular Chapter 7 and 11 case calendar. At one o'clock is the Diocese time slot. And obviously, if a letter needs to be filed further adjourning those or the Court needs to issue a text order, we can kind of work around those with that.

Why don't we then move on to the 2019, the motion to compel the attorneys representing the tort plaintiffs to submit the disclosures required by FRBP 2019 filed by LMI. I'm saving, Mr. Donato, the disclosure statement for the end. I assume that will take up the vast majority of the argument today.

So to the extent that we've already heard on that, but Mr. Roten, that was your motion. Was there anything further that you had wanted to add on that before the Court rules?

MR. ROTEN: Mr. Reinhardt will be arguing that, Your Honor.

THE COURT: Oh, thank you.

MR. REINHARDT: Yeah.

Good morning, Your Honor. Nate Reinhardt on behalf of Duane Morris on behalf of London Market Insurers. I'll try to keep this brief because I know we have a lot going on.

LMI had directed the motion to compel certain entities to comply with what I'll refer to as Rule 2019. Specifically, Jeff Anderson & Associates; Merson Law; Pfau Cochran Vertetis & Amala, I'll refer to them as PCVA; and LaFave, Wein & Frament. And, collectively, I'll refer to them all as the respondents.

Now, we recognize that the respondents filed Rule 2019 statements, but still assert that those statements are insufficient and do not include any litigation financing agreements, which we have shown apply to at least some of the respondents. As to the arguments raised in the oppositions, there is no dispute that compliance with Rule 2019 is mandatory, and there is no explanation from the respondents as to how compliance will delay progress of this case. We think these are separate and distinct from plan confirmation and the mandatory compliance with Rule 2019.

Now, LMI may also bring this motion pursuant to Kaiser Gypsum, which I won't belabor because we've heard ad

nauseam the amount of briefing on that, but just to say that LMI are parties in interest.

Now we think Rule 2019 applies to the respondents because their clients are acting in concert. It requires counsel representing more than one creditor to file a verified statement identifying them and disclosing specified information about their disclosable economic interests. That is why outlined in LMI's motion, Rule 2019 is applicable to each respondent because the respondents' clients coordinated and sought relief in this bankruptcy.

For instance, among others outlined in LMI's motion, this includes the request by Anderson, LaFave, and PCVA to issue demand letters through a stay relief motion, as well as other filings. As to this point, it does not matter that the respondents could have asserted their pleadings as individual motions, but chose not to for convenience. The fact is they did, and even if they had filed individually those motions, that does not transform the fact that the respondents filed their motions on behalf of their clients collectively.

Now, as to the actual Rule 2019 statements filed by Anderson, LaFave, and PCVA, we submit that those are deficient. And it's because Rule 2019(c)(4) requires an entity to file a copy of the instrument authorizing the entity, group, or committee to act on behalf of creditors. And we would submit this includes an executed power of attorney authorizing counsel

to file a proof of claim in this case.

Thus, or hence, Rule 2019 requires an entity to disclose its express authorization to file a proof of claim and represent multiple creditors in bankruptcy. For this reason, Anderson, LaFave, and PCVA fail to comply with Rule 2019 because the attached exemplars do not expressly provide that these entities have authority to file proofs of claims or act on behalf of their clients.

Each exemplar, for instance, states that Anderson and LaFave have authority to represent a claimant in investigating and pursuing claims for injuries and damages arising from sexual abuse against the Diocese of Syracuse, but that is insufficient. Moreover, there's additional exemplars that do not relate to the debtor's case at all.

Lastly, Merson Law filed a declaration stating that it does not have any litigation financing agreements and offering to produce the retainer agreements confidentially to LMI. And while we appreciate this offer, the declaration itself does not comply with Rule 2019, that is filing a verified statement publicly with exemplars attached for all parties to review and, of course, redacting sensitive information as necessary.

Now, a minor point as to the litigation financing agreements themselves, which none of the respondents provided, we're seeking those as well, if applicable. And we would

submit that under Rule 2019, an entity must disclose the nature and amount of each disclosable interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed. Rule 2019(a) defines a disclosable economic interest as any claim, interest, pledge, lien, option, and it goes on, granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

That is why Judge Warren concluded in the Diocese of Rochester to order the production of the litigation financing agreement. That order forms the basis of LMI's request in its motion, which I attempted to take nearly verbatim in our motion.

THE COURT: Excuse me just one minute, Mr. Reinhardt.

Would whoever is on the phone who has us on hold -- thank you, Ms. Johnson.

THE COURT: Continue Mr. Reinhardt.

MR. REINHARDT: As to that point, the mere disclosure of the respondent's retention agreements do not adequately represent their economic interest if they have pledged those interests as security for litigation financing. And our motion shows that at least some of the respondents, including Anderson, have financing agreement arrangements with litigation funders that expressly or implicitly provide the litigation funders with security interest in either contingency fees or

proceeds of abuse claims, necessarily including such claims against the debtor.

Now, I would submit, alternatively, the Court may also order the production of these under Section 105(a), as disclosure and transparency of these agreements is consistent with the Bankruptcy Code. We cited authority for that in our proposition, I mean, in our reply, so I won't belabor that point. I only have a few remaining points.

We believe that the Committee lacks authority to oppose the motion, and for that reason alone, the Court should overrule the Committee's objection. The motion was directed only at the respondents which the Committee do not represent, and they cannot represent the individual creditors for which those respondents act for.

Finally, Rule 2019 does not apply to LMI, as the Committee asserts, because LMI are not creditors. LMI have not filed proofs of claims in this case, and LMI do not hold a claim as defined in Section 101(5). And while it's true that LMI have asserted affirmative defenses that allege that the debtor breached the duty to cooperate, which would preclude coverage, LMI do not contend that the debtor's breach entitles LMI to a right of payment as defined by Section 101(5).

Rather, LMI's position is that the debtor's breach relieves LMI of any coverage obligations for LMI to pay to the debtor, which is not a claim for recovery against the debtor.

This is why LMI do not hold a claim against the estate. Further, LMI are not creditors under Section 101(10), as those requirements are clearly inapplicable, and I won't talk about them because I think it's self-evident.

So to sum everything up, LMI assert that the Court should grant LMI's motion. And unless Your Honor has any questions for me, I will cede the podium.

THE COURT: No, Mr. Reinhardt, I don't believe so.

Thank you.

MR. FINNEGAN: Good morning, again, Your Honor. Mike Finnegan with Jeff Anderson & Associates, on behalf of certain survivors.

LMI's motion should be denied for four reasons, Your Honor. First, they should not be allowed to use Rule 2019 at this stage of the case when they've known since 2020, more than four years ago when this case started, who we represent, the names of each survivor, what their claims are, what their economic interests are as to the debtor. And they've known for over a year, since July 7, 2023, that we had filed a 2019 statement. After that, there was no motion, no call, no letter to us until they filed this motion.

And, now, after we voted on a plan that had 99 percent of the survivors vote for it, the ones that voted, they bring this motion. They shouldn't be allowed to use 2019 this way.

The second reason their motion should be denied, Your Honor, is that Rule 2019 does not apply to lawyers like us who are representing individual survivors, individual creditors with claims against the Diocese. We have separate retainer agreements, which you've seen in our 2019, with each survivor. Each has a different case.

There's no agreement amongst the survivors. The vast majority of the survivors don't even know each other. And so the key to all that is that they're not acting in concert together. They don't know each other. They couldn't be, so it doesn't apply. And as the American Bar Institute Journal stated, with the changes that added that portion in 2011 the acting in concert, that does not apply to law firms like us.

I think if you look at the specific penalties or the sanctions that are in 2019 at (e)(2)(A) and (e)(2)(B), both of those, the penalties that they're talking about, is not letting the group as a group be heard or the group as a block, voting. That's not happening here. We represent individual survivors, speak on behalf of individual survivors. Each survivor voted on their own and that's what we anticipate again.

That's one of the most important things for survivors, Your Honor, is to have their individual voices heard in this. So it's not a situation like the Boy Scout case where they had a coalition of thousands and thousands of survivors that nobody in that case knew exactly who was in that

coalition. And so in that setting, it makes sense who is in that coalition.

There's no mystery around who we represent. That's been known since the beginning. And it's also not a situation where we are doing one vote on behalf of all of our survivors that we represent, so it shouldn't apply.

The third reason, Your Honor, is that even though we strongly believe that it doesn't apply, we have complied with the Rule, and so we filed and we made the same decision in the Archdiocese of Saint Paul, Minneapolis, with Judge Kressel. And what he had said in his order and in the transcript there is that you need to have the claim number of each survivor, the fee agreement with exemplars of each, and the date that each was signed. That's what we provided here as well.

And if we look at the Rule 2019, what it requires, it requires when the group was formed. Again, there's no group here, but we did give our relationship with each survivor as the date of the retainer, the name of each creditor that's in the proof of claims, the entities and each member's economic interest in relation to the debtor. We have none. I'll go over that in a minute, as well.

And the survivors, none of them were allowed to go to a jury trial where they could get a judgment so all their economic interest, the extent of their interest is outlined in the proof of claim, but they're not at a point of having an

actual judgment, a dollar figure, on it yet. And then the date of the economic interest that the survivors each obtained is in the proof of claims when they were abused.

The fourth reason, Your Honor, that 2019 shouldn't apply, at least to the business loans here, is that the key piece that LMI left out when they argued is that the economic interest is in relation to the debtor. So if you look at the Rule 2019, it's not just any economic interest. It's what's the economic interest in relation to the debtor. Our law firm has none. We have no claims. Personal claims that Jeff Anderson & Associate has against the debtor, we didn't file a proof of claim. Never. We couldn't sue him before this. We have no economic stake, us, in the debtor at all.

What that means is that Rule 2019 doesn't provide a basis for disclosure of our business loans. And it's no different than any of the law firms here that have business loans that they have. And they can have the same argument that their business loan operates on them in some way that means that they have to do something or they're -- but that's not -- all of us are officers of the Court. We take our ethical responsibilities serious and it has nothing to do with what we're doing here.

The one point that was raised, Your Honor, as well was the proof of claims and the official 410 allows us -- explicitly says that attorneys can sign the proof of claim.

And then if we look at Rule 9010 also explicitly states that a creditor may appear and act by an attorney authorized to practice in the court.

And then, Rule 9010(b) makes it clear that executing and filing a proof of claim is excepted from the requirement to show a power of attorney to act. In the alternative to that, Your Honor, all of this would hurt survivors and cut off their rights.

And so in sum, Your Honor, LMI should not be able cut off survivors votes here because of 2019 and it does not apply to us. So we're asking for an order denying the motion because 2019 doesn't apply or, alternatively, denying the motion because we have already complied.

Thank you.

THE COURT: Thank you.

MR. CALDIE: Good morning, Your Honor. Edwin Caldie on behalf of the Committee.

Your Honor, just to echo a couple of things as my computer warms itself up here. A couple of arguments that Mr. Finnegan just made to the Court actually dispose of this issue entirely, and it's the language of 2019 itself.

Number one, I also noticed that in 2019(c)(2)(B), the Rule applies to disclosure of each disclosable economic interest held in relation to the debtor. I think that disposes of the issue entirely.

Secondly, there's an issue raised about whether or not the exemplars provided to the Court under disclosures already made actually suffice to show that there's authority. Under Rule 2019(a)(2), the term "represent" is defined and it is defined in a way that absolutely makes clear that those exemplars authorize survivor counsel to represent them in the case in every way that they have been, including the ways questioned or discussed here today.

It's been more than four years, as Mr. Finnegan mentioned, since this case was filed. We spent that time working our tails off, to speak euphemistically, to find a resolution with all parties interested in settlement. Our efforts with many insurers, including the certain underwriters of Lloyd's, whoever they are, were not successful. But now in the midst of extended plan confirmation efforts, LMI asks us to focus on a sudden, apparently urgent need for a few select survivor attorneys to make Rule 2019 disclosures.

The motion is based on nothing more than insinuation, a conspiracy theory with no provided support. The survivor firms focused on by LMI, they're not plan proponents. The debtor and the Committee are. And there is no basis for the insinuation that these plaintiffs firms are some sort of puppet master in connection with the plan process. They are not. The interests of survivor claimants were represented by an unusually devoted and engaged group of survivor claimants in

this case.

They drove the bus. They continue to drive the bus. And they're going to continue to drive the bus. Any suggestion to the contrary is not just simply fiction. It's more than that. It's offensive to the degree that it ignores the substantial investments and engagement of the Committee members in this case.

On the substance of this motion, Your Honor, we don't think that Rule 2019 applies to counsel for survivor claimants. We agree with the reading espoused by survivor counsel already. Argument on that point, however, is set forth in our brief response at Docket 20, or excuse me, 2090, so I won't spend time rehashing it.

In any event, we believe the filings made by the Anderson & Associates firm in this case and others, which are if not substantial, they're similar if not substantially identical to those deemed sufficient in other Courts, including by Judge Kressel in Minnesota. And we think that they more than satisfy the requirements in the spirit of 2019, assuming it applies at all.

The Committee is also confident, Your Honor, that the insurers do not have standing to seek the requested relief under 2019 for reasons, again, recited in our brief, and reasons that we articulated in a much more lengthy way the last time that we were together, and we appreciate the Court's ear

on that. That was the Truck issue, of course. I'll simply adopt those arguments by reference today to save time.

What isn't detailed as thoroughly in our brief are some of the practical real-world perspectives on this, those sorts of considerations. First of all, Your Honor, I would draw an analogy to the disinterestedness test, the one that is applied to Committee counsel every time that we file an employment application in one of these cases or the employment application of debtor's counsel every time that there's a new Chapter 11 filed. That requires a determination, Your Honor, that the attorneys for the debtor and the Committee do not hold an interest adverse to the estate. It's very similar to Rule 2019.

However, I would argue that it is a more deeply probing, more exacting standard because it applies to literally everything that comes up in the case, so those firms must be examined at the beginning to determine that they don't hold an interest in relation to the debtor. Your Honor, in my years of practice, I've never seen an inquiry under the disinterestedness inquiry extend to law firm financing. And by the way, we all do it.

In most firms, at the end of the year, every dollar goes out. If it's a partnership, every dollar goes out. It's paid to partners. So if you're following a calendar year, on January 1st there is zero dollars in your bank account.

However, you still have to pay vendors, you still have to pay your landlord, you still have to pay the lights, everything. And how do we do that? In virtually every instance for a private firm, we do that through law firm financing. We have a line of credit. It's routine. Firms do it all the time.

But in the beginning of the cases, when employment applications are filed, I have never heard of an instance where the production of documents to probe the terms of that line of credit is required. The lenders are not deposed. They're not even identified. It's never even discussed. The notion that it's somehow different here, more concerning here, because it pertains to plaintiff's attorneys, is unfounded to say the least.

The fact is, Your Honor, that there is nothing different, there's nothing more shadowy at all about the financing agreements of plaintiff's counsel. The tort system has operated in exactly the same way for decades. The contingency fee is completely appropriate. That structure is completely appropriate. The claimants get paid. The attorneys take a percentage of the recovery. It's that simple.

So it's always been the case that plaintiff's counsel has a stake in getting a return, and as large a return as they can for their clients. That's not new. That's not somehow different here. And there's no way in which a financing agreement underlying all that, in the same way that Bond

Schoeneck likely does it. I don't know. And the same way that Stinson likely does it. Actually, I don't know that either, but I'm fairly sure. But it doesn't make a difference. The incentives remain exactly the same for survivor attorneys. The same as they've always been.

And I have to say, the basis for argument to the contrary sounds very loudly in the history of these cases, the claims that are at issue in this case. Since the early 1980s, when the first case alleging child sexual assault was initiated against a Catholic entity -- and by the way, that was done by the Anderson & Associates firm -- the primary deflection that has been employed by those with liability for sexual assault is, there's nothing to see here, this really isn't about us. It's really just a bunch of greedy plaintiff's attorneys trying to get as much money as they can. Pay no attention to the underlying accusations.

But that narrative has been proven definitively false by thousands of people who came forward to share very bravely, frankly, the truth of what happened to them. And my point, Your Honor, is that this is a kind of, what we're hearing in the argument in support of the 2019 motion, from our perspective, is kind of a tattered dog whistle of sorts. It asks us to focus our skepticism on the plaintiff's attorneys instead of where it belongs, on parties like LMI with financial responsibility to survivors.

It's the core of what we view LMI is trying to invoke here. There's no articulated substance to this concern. There is just an insinuation that we should be deeply skeptical of the shadowy motives of survivor attorneys. But in our view, Your Honor, it's the motives of the insurers in connection with this motion, not survivor attorneys, that should be scrutinized. The real purpose of this motion is they want to see estimates of claim values that might be reflected in financing documents.

In other words, the 2019 motion is no more than a vehicle to gain undue, unequal bargaining leverage by seeing what lenders might have said in terms of valuing confidential claims of survivors when they decided to finance them. They want to get underneath and view that negotiation process between survivor attorneys and their lenders.

And, finally, Your Honor, if the plaintiff's attorneys have to make disclosure, LMI should have to do it as well. They have argued strenuously that they're entitled to party-in-interest status. We disagree with that but that is their position. And as they acknowledged here today, it remains their answer in the declaratory judgment action. There is the suggestion that they may be creditors.

If that weren't enough, in their objections to the disclosure statement, they state that there are claims that are being released. They rely yet again on this idea that they

have claims that are being released through the plan.

Well, from our perspective, if you're in, you're in. And if you get to see the equivalent of plaintiff's attorneys' loss reserve information, those discussions with their lenders, then you should have to cough up the same for everyone else to see. How are we to know about the shadowy relationships that hide within LMI's so-called market? What is a market? Who are the various partners? Who owns those entities? Who invests in them? Do they have lenders? Shouldn't we be able to see what motivates these people who are apparently acting in concert? Just because there's a construct of a market there doesn't make it different.

So who are these people? If we're going to go for transparency, then let's do it. If we're worried about shadowy relationships that could lead to improper incentives, look no further than this market of interrelated parties that fund, or often refuse to fund, claims.

Behind this motion and a potential impact of granting the motion, the next step, Your Honor, could be an attempt to disenfranchise a wide swath of survivor creditors in this case. Mr. Finnegan spoke about that. That would obviously be a moral tragedy.

It's not just one of the most important things for survivors to be able to vote. For the vast majority of these people, the Committee was -- that smaller group of survivors

got to have counsel come and speak with you. The other survivors don't. They have one moment when they get to voice their perspective in this case. One moment. That's it.

They didn't get to choose whether this bankruptcy was filed. They just have to sit by and watch another institution, which is challenging for them, decide what their rights are going to be. And then they have to trust this other group of survivors in the end. But they get to voice their own perspective through a vote. If that was taken away, it would be nothing less than a moral tragedy.

But it would also give rise to a host of complex legal issues that would then be dumped, without an obvious path to resolution, on survivor claimants and on the doorstep of this Court, thoroughly and further complicating an already complicated confirmation process.

From our view, Your Honor, the 2019 motion is just an attempt to create delay and undue leverage. The filings by survivor attorneys to date are sufficient and the motion should be denied.

Thank you. Any questions, Your Honor?

THE COURT: No, Mr. Caldie. Thank you.

MS. LaFAVE: Your Honor, Cynthia LaFave, LaFave, Wein & Frament. I'm one of the attorneys that has been asked to provide information in this case.

I am a plaintiffs personal injury attorney. I have

been since 1984. Of all of the attorneys in this courtroom, I think Michael Finnegan and myself are the only ones that are not being paid for being here. Everybody else either is getting paid by the hour, gets a salary, or something. But we are contingency attorneys. We take risks to do the kind of work that we are doing.

As a plaintiffs personal injury contingency attorney, even if you are well respected and you work hard and you never take your eye off the ball, you can't always be flush with cash. Regardless of the success I have had in my business of plaintiff's personal injury, there have been times when I have had no money to keep my business going. It is never a straight line. It is never consistent income.

And no matter what accolades you receive in this career, there are mouths to feed. Whether it is your own home or your employees salaries, there always has to be an escape hatch in plaintiffs personal injury work. And let us not forget that even the IRS does not allow a plaintiffs personal injury attorney to write off expenses at the time they are expended on a case. You can only write them off when you get money on that case.

So if I've been doing these cases since the window opened, all of those expenses are actually income to me and I'm paying tax on that and I will not get those expenses back until finally we get paid on these cases. And that is when there is

a recovery. The IRS takes the position that plaintiffs personal injury attorneys should not be able to write those expenses off. Thus, you have to recognize early and often as a plaintiffs personal injury attorney that there are no guaranties.

In 1984, I hung a shingle out because I wanted to go out into the world and try cases for people who might not be able to afford me. I did not want to be trying cases for people who could pay me. I wanted to try cases for people who needed me. And I would take the risk to do that and I would do it over again. I've had a long career and I would do it over again no matter how hard it might sometimes be as far as income goes.

I've consistently worked 40, 50, 60 hours a week. Although I do try hard not to do that now, I'm still doing that. But it is work that I care passionately about. I was asked to take a case in the very early 1990s, and I represented a young woman who was sexually abused by her father. It was a Colony police officer. The case was tried in Saratoga County.

I got a verdict of $93.5 million dollars. It was the highest personal injury verdict in the entire United States that year. However, I didn't get paid. But what we did is we made a statement and we changed something. And it was important for us to do that.

THE COURT: Ms. LaFave.

MS. LaFAVE: The abuse will --

THE COURT: Ms. LaFave, can I have your circle back around, please, to the 2019 motions? I do appreciate this history. And I know it's interwoven. It's just we do have quite a few matters.

MS. LaFAVE: I'll go as fast as I can.

What I need you to know is that my office has been funding my time as I go forward, and recompense is not part of that equation. What's being implied here is that I will try to hold out until I can get the most money. What I'm telling you is if I were doing this for my own benefit, I would settle as quickly as possible so that I could pay off whatever loans I might have.

I will tell you that my office does have to borrow money and does have to sometimes weigh things. It is part of that business of contingency fees. But it's nobody else's business because you can't question what my motives are. I've spent 40 years in this business and I am not doing this for me. I am doing it as a career to help other people.

And as a plaintiffs personal injury attorney, I don't represent people because I want to get paid the most I can get for me. I want to get what is fair and reasonable for every one of those persons.

We do what we do because we want the world to be a safer place. We know we are representing people who need to

have their voices heard. We know that ultimately their voices will be heard and we want to change how America does business.

When money is paid out on child sex abuse cases, it does matter. Not just to our clients, but to the entire United States. We represent a lot of people who have gained a voice through the Child Victims Act and they tell us over and over again that they are doing this to make the world safer for other children who may not even be born yet.

The work we have taken on is hard financially, and we do have to do something to finance that. What we do is no different than what anybody else does to finance their cases or run their business.

Now, the insurance companies who have an obligation under the law and under all that is right to pay these claims under the policies that were bought and paid for fight every move to close this chapter. Just this month, we were informed that another one of our clients has passed away. It is excruciating to see that another client of ours will not see justice.

But now the insurance companies want to climb into my business and see my books and see how I run my business, which has nothing to do with me as an attorney and how I act and how ethical I am. Our manner of conducting financial stability is our own business. I think that the insurance companies, if they would like to make this argument about us, we should be

able to see their reserves.

We should be able to see what they said in their board of directors minutes that were meant to be secret. We should be able to see from them what they ask for from us.

As licensed attorneys, we are entitled to the respect to be presumed to be acting in our clients' best interests. This motion says we are not. And, in fact, if we were only concerned with ourselves, we would be lining up to take the first offer, the second offer, the third offer, so that we could take care of interest that might be accruing on loans that we have.

We choose this lifestyle, yes. We believe in what we do. But how we run our business should never be the subject of a court order requiring disclosure without any indication that we are acting unethically or working for ourselves instead of our clients. And there is no indication of that here.

I have been here at every hearing that I can make. I have been in the courtrooms. I have been on the phone. I have appeared, even though I only represent some of the survivors. If we were looking to make an easy buck, we would have done that a long time ago. I assure you we would never do that, regardless of the manner of how it affects us in our businesses.

Thank you.

THE COURT: Thank you, Ms. LaFave.

MS. CHAMPION: Your Honor, if I could just be heard on this matter very briefly.

THE COURT: Certainly.

MS. CHAMPION: Erin Champion for the United States Trustee.

The U.S. Trustee, Your Honor, didn't file a response to this motion. But to the extent that it's helpful, I just want to note that, and Your Honor may already be aware, that this issue was argued also in the Diocese of Buffalo last week, and in which case the U.S. Trustee did take a position that the financing agreement is subject to Rule 2019, just as a matter of financial disclosure and nothing more.

I think before Your Honor is just that issue. It's not if there's any implication by that agreement. It's just that it does fall under the scope as the parties having an economic interest of the debtor. So we would take that same position here, Your Honor.

THE COURT: Thank you.

MS. CHAMPION: Thank you, Your Honor.

THE COURT: Mr. Reinhardt, anything further? Briefly.

MR. REINHARDT: Yeah, briefly.

Just a few points echoing the same thing. This is merely a disclosure pursuant to the rules, pursuant to bankruptcy. There's nothing insinuating about it. And the

basis provided by Judge Warren's decision in Rochester, which I didn't hear any contravention to that authority. LMI filed this motion in good faith. We attempted to mediate in settlement this case, but it was unproductive, and so we're just looking for transparency and to valuate any proper influence from third parties.

My second point is that Rule 2019 applies when acting in concert, meaning when you take a proactive, coordinated position in bankruptcy, and that's what some of the filings by the various respondents did. I would only also say that when they were talking about a claim held by the debtor, the first part of that is a disclosable economic interest held by the debtor, which is, as I said, a right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest. And we would submit that applies to those financing agreements.

Last point is we're not looking to cut off votes here. We simply want to see the agreements. That was just stated that if they were unwilling to produce that, that's what follows. I would also submit that the disinterestedness of an employment application is irrelevant. We're talking about Rule 2019.

With that, I'll take my leave.

THE COURT: Thank you, Mr. Reinhardt.

Anyone else? Anyone on the phone wish to be heard?

I believe all the parties who responded have already spoken.

(No audible response)

THE COURT: Hearing none, the Court has reviewed the motion, the memorandum in opposition to the motion filed by Jeff Anderson & Associates and LaFave, Wein & Frament with the declaration of Mr. Finnegan at Document Number 2067 and 2073; the joinder to opposition filed by the PCVA Law survivor claimants, Docket 2088; and the response to the motion filed by the Official Committee of Unsecured Creditors at Docket 2090; also, the omnibus reply in support of the motion filed by LMI at Docket 2167.

The Court has also reviewed the 2019 statements filed by Jeff Anderson & Associates, Docket 1323; LaFave, Wein & Frament, PLLC, at Docket 2010; the Marsh Law Firm, and Pfau Cochran Vertetis Amala PLLC, at Docket 2060; and Merson Law, PLLC, at Docket 2164, which the Court believes constitutes the full record in this particular motion.

The Court recognizes Rule 2019 and shares that all parties that are a group or committee of multiple creditors or equity security holders and their counsel will make disclosures of economic interests that are relevant to the bankruptcy case into which they are appearing. 9 Collier on Bankruptcy, Section 2019-01.

Rule 2019 is self-effectuating and requires compliance if there is a group acting in concert, which we have

here, where attorneys are actively involved in a case and representing multiple creditors. Collier specifically states that if a group seeks to, *inter alia*, modify the stay, the entity representing the group must comply with Rule 2019.

Indeed, each of the law firms identified by movant LMI have filed pleadings and appeared in this case representing their respective clients as a group. Given that each law firm has appeared on behalf of a group, Rule 2019(b) applies and requires a verified statement to be filed by that entity representing creditors acting in concert towards a common goal.

After careful review, the Court finds that the current 2019 verified statements filed by Jeff Anderson & Associates, Docket 1323, and LaFave, Wein & Frament, Doc. 2010, are sufficient to comply with Rule 2019 requirements in light of the various confidentiality protections that are in place here. They have provided the proof of claim number, which confidentially identifies their client claimant; their address and the nature and the amount of the claim asserted, as required by the Rule; and the claimant's exemplars of the engagement agreements that identify the fee agreement and the sharing of those fees with other counsel with prospective client waiver language that are attached to the verified statements.

The Court finds the 2019 affidavit of Marsh Law Firm and Pfau Cochran Vertetis Amala PLLC is sufficient for the same

reasons identified, except that counsel there, who is not present today, is directed to obtain conflict waivers from each creditor and file an affirmation advising that each client has waived any potential conflict arising from joint representation of multiple creditors in this case.

The Court has reviewed the declaration filed by Merson Law sexual abuse claimants and finds that it fails to meet the requirements of FRBP 2019. Although Merson states that it is willing to provide redacted fee agreements confidentially, that is not enough to satisfy the Rule.

The declaration fails to include pertinent information such as proof of claim numbers for claimants from the exemplars of the engagement agreements that identify the fee arrangement and, if applicable, the sharing of those fees with other counsel, together with prospective conflict waiver language. In light of this, Merson is directed to file an amended 2019 statement with this information and documentation.

LMI contends that a specific power of attorney authorizing counsel to sign a proof of claim must be disclosed and suggests that failure to comply should result in, among other things, the invalidation of ballots cast by survivors represented by counsel. This Court disagrees.

A power of attorney or other authorization permitting counsel to act on behalf of their clients is not required by Rule 2019 and will not be required by this Court. The Court

looks to the Southern District of New York in In Re Ionesphere Clubs, Inc., 101 B.R. 844, which held that an entity need only file an instrument that empowers the entity to act on behalf of creditors and that, although this may include an executed power of attorney, an executed power of attorney is not the sole means of fulfilling Rule 2019.

It's been represented by Jeff Anderson & Associates that its clients' proof of claim were each individually detailed and set out the specific nature of the claim and the ballots were individually signed by the survivors, which overwhelmingly supported the fair and amended plan.

With respect to the disclosure of the litigation funding documents, the Court respectfully disagrees with Judge Warren and the U.S. Trustee and finds that they do not pertain to an economic interest held in relation to the debtor as described in Rule 2019. They are two separate arrangements. You have a survivor claimant with an economic interest held in relation to the debtor via a filed proof of claim and that claimant in turn has granted counsel a right to a percentage of that economic interest in exchange for representation as identified in the engagement letters.

Then, separately, you have a security interest granted by counsel in that recovery to counsel's lenders as a source of funding the litigation, which is not a direct economic interest in the debtor. As the law firms correctly

stated, they have no specific claim against the debtor here. And to find to the contrary, quite frankly, would produce a whole host of trickle-down issues with attorneys representing claimants in these bankruptcy cases.

The 2019 statements provide the pertinent facts and circumstances regarding counsel's interest held in relation to the debtor. While not in the bankruptcy context, the Court notes that disclosure of third-party litigation funding documents is strongly disfavored in New York. The Eastern District of New York explained the rationale behind the policy against the disclosure.

Defendants' arguments that they are entitled to understand the litigation funder's ability to intervene and dictate the legal strategies or settlement discussions is just a series of conclusory and irrelevant assertions. A defendant is not entitled to learn any of these things in any case, absent some special need or showing. One party to litigation is not entitled, absent some contractual or other relationship like an indemnification agreement, to know why the adverse party chooses to make certain strategic decisions in a case or avoid settlement.

Many such considerations are privileged, and if they are not, they are irrelevant and outside the scope of what a party needs to defend or prosecute its claim. Benitez v. Lopez, 2019 U.S. Dist. LEXIS 64532.

In sharing these concerns, the Court also denies LMI's request to compel production of litigation funding documents pursuant to Section 105(a). Compelling production of those documents would improperly confer upon LMI a right that LMI does not have under the Bankruptcy Code or New York law, which protects the confidentiality of such agreements.

The Court does not see any relevance or other contractual grounds to compel their disclosure when the Court finds it outside of Rule 2019 requirements. There has been no special need or showing.

Indeed, the Southern District of New York recognized courts in the circuit have rejected claims for litigation funding documents when the only asserted relevance is that they will permit the requesting party to peer into its adversary's strategy, the adversary's reasons pursuing what the requesting party might believe is baseless litigation, and the adversary's rationale for accepting or rejecting settlement offers. Eastern Profit Corp. v. Strategic Vision, 2020 U.S. Dist. LEXIS 239663.

As noted, the purpose of Rule 2019 disclosures is to make disclosures of economic interests that are relevant to the bankruptcy case in which the group or equity security holders are appearing. The Court concludes these goals have been accomplished by the Anderson and LaFave disclosures.

As previously noted, the Marsh Law Firm and Pfau

Cochran Vertetis Amala PLLC, jointly are directed to obtain conflict waivers from each client and file an affirmation with the Court within 45 days advising if each client has waived any potential conflict arising from joint representation of multiple creditors.

Finally, Merson Law's declarations failed to meet the requirements laid out in Rule 2019, even though it has appeared in this case through Sarah R. Cantos, Esquire, by the filing of a motion for relief from the automatic stay on September 7, 2023. As such, Merson is directed to file an amended Rule 2019 statement that includes a list of the claimant it represents in this case, identifying each claimant by claim number only, the nature and amount of disclosable economic interests each claim holds in relation to the debtor, an exemplar engagement or retainer agreement between Merson and its claimants, and fee sharing agreements, if any, with any other law firms, along with an affirmation advising that each claimant has waived any potential conflict arising from joint representation of multiple creditors in this case.

The Court denies all other requests contained in the motion, as well as the Official Committee of Unsecured Creditors' counter-motion, and the Court will draft a summary order that will be entered and will make sure that that is served on the law firms that are not actually appearing here today.

Thank you.

Let's now move on. As I indicated, the disclosure statement I would like to take last, unless Mr. --

MR. DONATO: Yeah. Oh, no. Your Honor, I didn't mean to interrupt you. There were other matters on the calendar, so I'll just follow your lead.

THE COURT: Yes, we have. Let's go to an easy one, first. We're kind of skipping around here, Mr. Donato, but since you stood up, the Court would like to jump to the Adversary Proceeding 105(a) and the mediation order in light of -- this will be a quick one -- in light of the resignation of Mr. Van Osselaer.

Mr. Sullivan.

MR. SULLIVAN: Yes, thank you, Your Honor.

Good morning, Your Honor. Charles Sullivan, Bond, Schoeneck & King, on behalf of the Diocese of Syracuse.

Your Honor, following the submission of the proposed order to the Court, Mr. Van Osselaer reached out to us and indicated his unwillingness to continue in the capacity that was set forth in the order. And, Your Honor, just by way of background, that capacity had specifically been requested by counsel for the National Catholic Risk Retention Group, which was one of the insurers who had entered into a settlement agreement that involved the Diocese, the parishes, the Committee, just to be able to remain on to button that down.

Your Honor, in my view, that continuing involvement was unnecessary, but we were willing to put it in the draft order. And it was my understanding that Mr. Van Osselaer was on board with that. That understanding was corrected, Your Honor, after communicating with Mr. Van Osselaer.

So, I'm a little uncertain about the status of that order at this point, Your Honor. We could submit a revised order with that portion stricken, or we could let Mr. Van Osselaer's resignation stand on the -- I would like some guidance from the Court on that, Your Honor.

THE COURT: Certainly, Mr. Sullivan.

The Court will do an amended order that simply removes that portion, except with respect to assisting the parties to finalize settlement agreements with the previously settled insurers. So to simply just terminate him in accordance with his termination, that will simply conclude his role. The Court assumed when it was on consent that he was on board with that, and I would like to thank him.

Certainly, the Court apologizes and accepts his resignation with tremendous gratitude for his efforts in reaching the global, or the resolution between the debtor and the Committee, as well as the three settlements that have not yet been teed up. So the Court certainly is prepared to do that.

The other issue that was not incorporated in the

order on consent, and the Court hesitates to make any changes to orders on consent when the parties aren't before it. The Court also had ordered a stay on the prior motions in the adversary proceeding pending further order of the Court and the Court is going to include some language in that regard with respect to an amended order. So the Court will file that, accepting his resignation in total, as well as tolling it until further order of the Court.

And we'll adjourn the status conference to January 16th as kind of a control date to see where we are, whether it makes sense to proceed with those motions, or whether or not we're headed more towards a global resolution with the insurance companies.

MR. SULLIVAN: Understood, Your Honor.

And, certainly, I apologize, Your Honor, for misunderstanding Mr. Van Osselaer's position on that.

Also, Your Honor, the proposed order we submitted does -- pardon me, incorporate by reference the prior mediation orders that does include the stay, Your Honor. So that's how we were attempting to achieve it. But I do think that the Court's suggestion of having that be expressly stated in this order is probably preferable.

THE COURT: Certainly.

And, again, we'll adjourn the 105(a) on the adversary to January 16th at one o'clock. And unless there's somebody

else that wishes to be heard on that, I think that wraps up that matter on the calendar.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: Thank you.

Is there anybody else who wishes to jump in on that?

(No audible response)

THE COURT: Okay. Moving right along.

Why don't we move to the motion to seal and/or redact? And then we'll do the disclosure statement last.

MR. REINHARDT: Good morning, again, Your Honor. Nate Reinhardt on behalf of London Market Insurers.

The motion to seal is straightforward. It requests permission to seal and redact information and claim objections that LMI intend to file. I think the real question for the Court is whether the Court prefers over approximately 70 motions to seal alongside our intended claim objections or if the Court wants a single motion to seal.

We do not believe this is controversial. As stated, LMI are parties-in-interest under Kaiser Gypsum, and adopt all those arguments previously. To support LMI's objections, LMI will rely on documents or information that are subject to certain confidentiality provisions, including a bar date order at Docket Number 214 and a separate confidentiality agreement relating to discovery received by LMI.

To protect this confidential information, LMI propose

an order that their objections will be sealed and redacted and that LMI do not need to file a separate motion to seal for each claim objection. If there are issues with the form of the order or if the parties have objections to the order, then we can revise it accordingly. And as stated, if the Court prefers, LMI can submit individualized motions to seal for each claim objection that it intends to file.

But to be clear, the motion to seal does not seek to establish procedures for objecting to survivor claims or any of the same relief that LMI initially sought in August 2023 and again in March 2024. Notably, no opposition disputes or contends that certain documents do not fall or information do not fall within the scope of Section 107(b) of the Bankruptcy Code, which protects confidential information.

And if the Court makes the determination that this information is confidential, under Second Circuit law, the Court is required to protect a requesting interested party and has no discretion to deny the application. Hence, there is no dispute that the information on which LMI intend to rely fall within the scope of Section 107(b) of the Bankruptcy Code.

Instead, the oppositions to the motion seem to conflate LMI's prior relief in the two procedures motions with the current motion before the Court and dispute LMI's right to file claim objections. As stated, we are not seeking any of the same relief and the merits of the claim objections

themselves, including whether LMI have a right to file claim objections are not before the Court.

In July, Your Honor adjudicated Hartford's motions to seal as well as Interstate's motions to seal relating to ongoing discovery issues involving plan confirmation. And I recall at those hearings, Your Honor raised concern about appropriately redacting all confidential information, including any information that could implicitly lead to confidential information and to be overly cautious about that. Those are my words.

We take those redactions and the protection of confidential information very seriously and would take care to redact all appropriate information. To illustrate, and I believe in this case we filed individualized motions, LMI similarly filed redacted objections in the Roman Catholic Diocese of Harrisburg to protect this confidential information. And I believe we cited that case in the docket numbers where we submitted those.

LMI would also provide the debtor, Committee, and the claimants who are subject to the objection and the claimants' counsel with unredacted copies of the objection.

And with that, I don't think there's really any more that needs to be said. I'll cede the podium.

THE COURT: Mr. Reinhardt, did you want to respond because the corresponding motion is obviously the motion to

strike the LMI motion? Is there anything in particular you wanted to hit on for that before we hear from the Committee?

MR. REINHARDT: Actually, and I wasn't sure if they were going to go first, but it makes sense to address it now.

As to that motion, I think a lot of the same arguments apply. We're parties-in-interest and so we have a right under Kaiser Gypsum. We also believe that that motion is procedurally improper under the rules because when you're talking about a motion to strike, there are certain documents or motions, or excuse me, certain documents or pleadings that are listed but motions is not one of them. And I would submit, as stated in our motion, or excuse me, in our opposition to our motion to strike.

THE COURT: Thank You.

MR. KUGLER: Thank you, Your Honor. Robert Kugler on behalf of the Committee.

The question that's posed by this motion is whether the Court has the authority to control its case and its docket and determine how the case should go forward. This is their third attempt to foment claim objections in this case, and the Court has wisely on two prior occasions denied motions that are anticipating that and has instead opted to shepherd the bankruptcy process forward towards a plan and a confirmation process. And in my opinion, that was wise.

The Court has, on numerous occasions in this case,

turned away from efforts to propel litigation aspects of this case forward, most recently at the last hearings when various parties were interested in having the adversary proceeding on the coverage issues go forward. There will be a time and a place for litigation. Hopefully, it'll be post-confirmation. It won't be during the pendency of the case.

But it certainly has no compelling reason at this stage to engage in the claim objection process. And, in fact, I would say there will never be a compelling reason or any reason to engage in a claim objection process that will have no impact whatsoever on LMI, a party who has not accepted one cent of financial responsibility for anything in this case.

So there's no reason to go forward with the claim objections. And, frankly, that process will be mooted ultimately through a settlement. Or, if it has to go forward, it will go forward in the proper place, which is state court in the tort system.

And so, we feel that the law of the case here is pretty clear pretty clearly so, that the Court has opted not to go forward with the claim objection process prior to confirmation, at least at this time. We think it's the wise thing to do to continue to take that perspective, and we think the motion ought to be denied. How it gets dressed up is really not the point. The motion to seal is moot if claim objections aren't going forward.

So we would ask that the motion be denied, or in the alternative, that the motion be stricken because the law of the case determines that it should be stricken.

THE COURT: Thank you.

MR. KUGLER: Thank you, Your Honor.

MR. FINNEGAN: Good morning, again, Your Honor. Mike Finnegan with Jeff Anderson & Associates.

There are multiple reasons why LMI's motion should be denied. And we agree with Committee counsel that this is really a motion for reconsideration of their attempts to do claim objections.

First, the reconsideration standard is much higher than anything else and they haven't met that high standard, that high burden.

Second, Your Honor, everything that the insurers want to object to, that's all things that they retain the rights to, to litigate when we get to state court. And the difference is when we get to state court is both sides have the full rights of discovery to litigate those cases, which is what will happen. So they're not losing anything here by not being able to do claim objections at this point.

Third reason, Your Honor, is that claim objections at this stage will delay this case and it could cost millions of dollars. And the reason why is because if you look at their actual claim objections or what they've said in other cases,

one of the claim objections that they want to take is, just an example, is they want to argue about whether a religious order priest who was working in the Diocese, if the Diocese is responsible for that priest. So that would be -- an example would be there are religious orders like the Jesuits or the Salesians. And they have a priest that comes in, works in the Diocese of Syracuse, and the objection would be that the Diocese isn't responsible for that priest. We disagree with that.

But what happens then with that, on that one single claim objection is, each survivor would have to request documents from the Diocese, from the parish, and from the religious order. Most of the time when that happens, there are fights about what's produced and what's not produced, so there's motions to compel. Then you move to the next phase of taking depositions.

Take a deposition of the bishop, of the records custodian at the Diocese. You take at the parish, the parish priest, records custodian there. For the religious order, their top person is usually called the provincial. You take of the provincial and other people at that religious order. And that's all to resolve one factual claim objection.

And so we went through this with Judge Glenn in Rockville Centre that cost millions of dollars and didn't get us any closer to getting done. It actually delayed the case

significantly, I thought.

And the result of that, Your Honor, the other thing that's true in this case, and it was true in Rockville Centre as well, is at least for the survivors that we represent, and I think most of the survivors, have cases against both a parish and the Diocese. And so what happened in Rockville Centre was they did claim objections on the party that was in this Court, the (indiscernible) in that court, in Judge Glenn's court, and the Diocese. So there's a claim objection as to the claim against the Diocese.

The survivors still, in state court, had their parish lawsuits that were there. And so there's all kinds of litigation around this, around the Diocese portion of it. Some got appealed, some the survivors won, and some the Diocese won on those.

But then what happened when there was an ultimate resolution was all of those cases, even the ones that had been sustained on the claim objection, because they had the parish lawsuits and the insurance covers both the Diocese and the parish, all of those survivors were forced to come back into the settlement and to the resolution because they had insurance.

And so the insurers would not allow those survivors to keep going. They had to be involved in this. And so that's another reason why, as a practical matter, it doesn't make

sense to do claim objections here.

And lastly, Your Honor, the fourth point is that if they're allowed to do claim objections, we will be forced to bring motions for relief from stay in each one of the cases and send these back to state court to have these litigated. And I don't think that given where this case is at right now, that that's the best use of our time at this point and our energy. And I believe that that should be spent on focusing on confirmation and saving all the litigation issues until we get back to state court.

Thank you.

THE COURT: Thank you.

Mr. Sullivan, yes.

MR. SULLIVAN: Your Honor, Charles Sullivan, Bond, Schoeneck & King on behalf of the Diocese.

Your Honor, as has been already said, this is at least the third attempt by LMI to crack open the door on objecting to claims. I agree with the suggestion advanced by both Mr. Kugler and Mr. Finnegan that this is a thinly-veiled request for reconsideration.

One point that I did want to address is that LMI seems to be hinging its request to shoehorn this open on the question of standing. That that was an issue that was not specifically addressed by this Court, which was the case. In the prior decisions denying the request to establish procedures

for objecting to claims, the Court specifically stated that it was not considering the question of standing.

And I respectfully point out to the Court that this Court can deny LMI's request without even engaging in the question of standing for exactly the reason that was described by Mr. Kugler. To quote the transcript of the hearing where the Court denied LMI's second procedures motion, which appears at Docket Number 1887, the Court repeats its previous finding that allowing a claim objection process to proceed now would be distracting, time-consuming, and expensive, and may impair or delay confirmation.

So because the Court was able to deny the process previously without engaging the standing question, it doesn't have to decide that issue now, is my submission to the Court. And with regard to LMI's standing arguments, I would point out that LMI has continued to fail to identify a single instance where a carrier has been authorized to pursue claims objections. And in response to any argument that Kaiser Gypsum vs. Truck may change that, Your Honor, we incorporate by reference the arguments that have previously been submitted to the Court on that question.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Reinhardt, did you want to reply?

MR. REINHARDT: Yes, Your Honor. Two brief comments.

The prior two motions were denied and, admittedly, because it would be confusing to plaintiffs, as to the procedures that were being proposed therein. There's nothing like that in this motion here. It's just whether or not there should be a general order for a motion to seal for all these claims objections that we intend to file.

We don't think this is a reconsideration because it's different relief being requested. But, again, if Your Honor feels differently, we can go ahead and file individualized motions to seal for all the claim objections. The actual merits of whether LMI have the right to file claim objections was not before the Court in the two prior motions and is not before the Court in this motion at all.

As to why we keep asserting this, I was trying to look for it in the plan and I couldn't. I didn't have enough time. I recall that once confirmed, the plan removes LMI's right to file claim objections under the Bankruptcy Code. That's why we keep trying to assert this now before plan confirmation.

Thank you, Your Honor.

THE COURT: Thank you.

Anyone else? Anyone on the phone?

(No audible response)

THE COURT: Hearing none, the Court has reviewed all of the papers as well as the corresponding motion to strike the

LMI motion. In light of the parties' return to mediation, which the Court notes was at the request of the insurers, the Court is adjourning the motions to January 16th at one o'clock, at which time the Court will hear from the parties if the motions need to be pursued and decision needs to be issued, or if that will help advance the ball in the mediation for a global resolution with LMI and the other insurers, or if mediation has stalled, if LMI wishes the Court to proceed with issuing a judgment.

The Court recognizes that LMI disagrees with that approach, but that's the Court's decision, managing its docket, as well as the time, expense, and distraction of a claims objection process. So the Court is adjourning the motion to seal along with the motion to strike to January 16th at one o'clock, and we'll treat that day as a report back. And if the parties wish the Court to issue a decision at that time, the Court will take that under advisement.

Okay. I think that leaves the disclosure statement.

MR. DONATO: Yes. The only other is there's the -- it carried on the calendar, is the 105 arguments concerning Truck.

THE COURT: Correct. Yes. The Court is in the process, I don't even know how many dozens of pages the decision is yet, but we are in the process of issuing a decision on Truck that also has a second part that has all the

discovery disputes. That is a work in progress, a constant work in progress.

I don't want to make a promise and not be able to deliver that, but the Court does expect in the next few weeks that that would be issued. That will hopefully streamline the confirmation process and perhaps give some more assistance in reaching a global resolution. So that's the 105(a). We can adjourn that to January 16th for control purposes. But the Court thoroughly expects to have a written decision out in the next few weeks.

MR. DONATO: Thank you.

MR. WINSBERG: Your Honor, Harris Winsberg on behalf of Interstate just briefly on that.

We submitted, Your Honor, one page notice of supplemental authority from Judge Goldblatt. I just want to make the Court aware of that.

THE COURT: Yes, thank you. Judge Goldblatt is making authority all over the place. He's very good at that, so.

(Laughter)

MR. WINSBERG: Every day.

THE COURT: Every day. Every day.

Yes.

MR. WINSBERG: Although, Your Honor, I would point out to the Court, I don't think that's a reported decision nor

is it a decision. I think the parties have not, in that case, have not had an opportunity to brief the question.

THE COURT: Understood. Understood. The Court obviously follows all of those decisions very carefully as well and appreciates that the -- to make the Court aware of developing case law. Obviously, this is a constantly evolving situation in light of the Supreme Court's decisions in both Truck and Purdue, so certainly appreciates that.

Was there anything else that anyone wanted to comment with respect to the Truck 105(a)? We'll just adjourn that for control purposes to January 16th at one o'clock and expect that there will be a decision prior to that time.

MR. DONATO: Good morning, again. Steve Donato, Bond, Schoeneck & King, for the Diocese of Syracuse.

Before the Court today is the Diocese solicitation motion along with the request to approve the fourth amended disclosure. Well, excuse me, the disclosure statement concerning the fourth amended plan. That disclosure statement is at Docket 2173.

At the outset, there is an inconsistency, this is a minor point, although a million dollars I guess is not minor. There is an inconsistency in the disclosure statement with the plan. I just want to point it out. We will fix it.

At Definition 1.1.444, there is a definition that provides a participating party. So the non-diocesan affiliates

are going to be contributing $49 million.

In the disclosure statement, there's a reference at Paragraph 16 that the participating party contribution will be 50, and that is correct. So we will fix the definition at 1.1.444 to provide that the participating party contribution is 5-0 instead of 49.

After Purdue, Your Honor obviously had several hearings and we determined, the Court agreed, that we needed to file a further amended plan and disclosure statement to address the Purdue directions as set forth by the Supreme Court. And we did that. And that's the pending disclosure statement and plan. Plan is at Docket 2172. Disclosure statement, as I said, is at 2173.

And we filed the amendments. But I guess just to take a step back, I'd say 90, 95 percent of the disclosure statement has already been fully vetted. It's the same language. You've already approved that. We'll talk about it in a little while. Some of my adversaries thought that maybe this was Groundhog's Day or a do-over so that they just raised many of the issues that you had already ruled upon. So we'll talk about that.

But I guess the point I'm trying to get across is here, the lion's share, the large majority of this document has already been approved by you over fierce objections by all my adversaries here trying to block moving forward. We need to

kind of take a step back. We are trying to implement a settlement of $100 million where the Diocese and the participating parties have agreed to contribute $100 million. That deal is two years old. And every time we've brought it -- and, of course, the Supreme Court knocked us off stride as well.

But every time we come to try to get to consummate that deal, to take care financially of the survivors -- I know there's way more than money, and we fully recognize that. But this is about money right now. This is not a commercial case. This is a case of just trying to get financial recompense to the victims. And the Diocese and the Committee and the parishes have had a settlement for a long time.

So respectfully, even though there's lots of objections, the lion's share of what's before you, you've already seen, and you've already approved, and I'm just asking that, if nothing else, we kind of corral whatever the issues are today to the Purdue issue, since the other parts of the disclosure statement are exactly as they were, and they've already been approved by you.

Our goal is to get to the main event. There's been more trees, there's been more paper, there's been more anything that I can imagine in this case. This stage of the case is about disclosure. We have it. The insurers know more about this case than I do, okay. There's so much information that

has been provided.

From an 1125 standpoint, respectfully submit, we have, there is more than enough. We've got to get to the main event. We've got to get past the disclosure statement.

What did we do? Well, we obviously read the teachings of the five-to-four decision by the Supreme Court, and we added provisions into the plan and disclosure statement that allow abuse claimants -- not allow -- recognizes their absolute right to basically be a non-participating abuse claimant. What does that mean? It means that they have the right to object to a release of the participating parties.

The Diocese is in Chapter 11. The Diocese, assuming it does what it's supposed to do, will hopefully confirm a plan and receive its appropriate relief under 1141. This is third parties. And as we know, the Supreme Court's decision was very narrow, pretty spirited, too, an interesting dissent as well. But it was very narrow.

All it said is non-consensual third-party releases don't work. That's it. There are no questions about what is consent, things like that. They were very clear. They said this is a narrow decision.

So, before us is what we believe we have addressed the Purdue issues. We've put them in the plan and disclosure statement. As I indicated, it specifically modifies the plan to confirm the right of each survivor to decide whether to

agree to third-party releases.

So we think that the teachings of Purdue have been incorporated into the plan and disclosure statement. And as I indicated, we think they're small. It's a small part. It's an important part. Obviously, the Supreme Court changed the rules. But it's still a small part of the entire document before you today.

So I guess I'll make an initial statement. You had indicated that, of course, you're reviewing the Truck standing issues and the carriers apparently think they've got some super-duper discovery -- excuse me, standing rights. The bottom line, though, is I ask that many of the objections that were raised by the carriers that the Court consider the standing issues.

Certain carriers made objections, which I'll talk about in a minute. LMI made objections, as I indicated. But clearly, they raised just about every issue that you've already disposed of. I reference specifically the chart on Pages 9 and 10 of Docket 2281. That's our reply. That's the diocesan reply. And as you know, we're working with the Committee on this, so actually, the Committee did an excellent job on this as well. But we put in a chart.

It was actually Mr. Logan Kugler who did it, but cross-referenced every repeat. And I just wanted to reference it. I think it was nicely done. And I think it's pretty clear

in those pages, Pages 9 and 10, that frankly, LMI, they've just got a kitchen sink approach. If they can get away with it, why not? Let's ask for claim objections for the third time, even though you said no. Why don't we, Judge, refile all our objections that we filed for the last two and a half years and see if Judge Kinsella, well, maybe she'll grab one.

So what I'm asking for, we've got to get past those kinds of games. We've got to stay focused on what's before the Court right now.

I'll make another observation, because again, some of this is going to involve what is consent and things like that. But most of these survivors, as you just heard, they're represented by highly experienced, sophisticated counsel, right. I mean, they know what's going on. These people have been in more cases than I have.

And so I think that's something the Court should just consider as we're working through disclosure statement approval. Survivors, they're not commercial banks. But they have excellent, sophisticated counsel, which I think can help provide the guidance that's necessary to help them work through an 1125 document as leaning towards making a decision on the plan.

I also observed that there was overwhelming creditor support for the plan that we filed, right. We only got two objections. There were non-votings. But for all voting

creditors, we only had two objections.

Now, I think it matters, because although we're going to put in the Purdue option, and that means that some of these entities will have the right to disagree with the third-party release, their actions are suggesting that they want to get to the end of the road here. And I respectfully submit the Court should consider the fact that we had an overwhelming 99 percent acceptance. Just a factor to consider when looking at 1125 and trying to move forward with this case.

THE COURT: Mr. Donato, is the Court's recollection correct. There was approximately 100 people who didn't vote?

MR. DONATO: Yes. Yes. I think it was actually 100 non-voters. And obviously, we will have to address that.

So I just want to make a couple more general observations. We were troubled a little bit by the United States Trustee's objections, just the general thing, okay. I know they got their big Purdue victory and everybody's all happy about that, and that's all fine. But why would the U.S. Trustee enter now and cause more delay? Why would they delay?

We just heard Ms. LaFave talk about the fact that survivors are dying. We say it every day, okay. We've been together with this creditors Committee for a long time. And the fact that people are passing away, we've got to get moving. And why the U.S. Trustee would now delay, get in the middle of this and try to slow it down. We know why the carriers are

doing it. The carrier's job is to keep their money in their pocket, notwithstanding the fact that they profess that they want to settle and to do all this other stuff.

As you know, none of the main carriers have even come close to settle. So it's just kind of an interesting situation. But I don't know why the U.S. Trustee would seek to slow down recoveries for these victims. And I think that that's something the Court should consider.

The U.S. Trustee objection, obviously, has quite a few points to it. As I indicated, in regard to the ballot and solicitation, I'm going to ask Mr. Walter to address it. But I want to make a couple of quick observations. Kind of summing up what the U.S. Trustee, because of course the ballot is the key thing, right. Opt-in or out, we're talking about solicitation. That's one of the -- frankly, I think if I take a step back and I was trying to think because I mentioned that we are hoping to have a confirmation hearing like third week of January.

I mean we've got to get moving on this and we're suggesting 21, 22. We've already talked to the Creditors Committee about that. We've got to get moving on that piece. And so I think there's probably two things that need to be resolved but most of the U.S. Trustee objections are confirmation objections, okay.

They say that it contains improper third-party

releases, confirmation. Judge Glenn just ruled yesterday and he approved the disclosure statement and dismissed all of the U.S. Trustee objections, I believe -- not dismissed them, but said they're confirmation hearing objections.

So as far as the U.S. Trustee's continued statement that there still are third-party release issues, it's a confirmation issue. Issues concerning treatment of non-participation claimants, confirmation issue. U.S. Trustee fees, of course I always enjoy this, right. The U.S. Trustee is a watchdog, but they've got to get their money, confirmation issue.

Releases, exculpation, confirmation issue. There's only one issue that the U.S. Trustee has raised that's an issue that we've got to resolve now and that's the ballot and solicitation issue.

What I'd like to do is just ask Mr. Walter to address the Court on that piece and then I will continue.

THE COURT: Thank you.

MR. WALTER: Thank you, Your Honor. Grayson Walter on behalf of the Diocese.

Your Honor, we recognize that the lessons of Purdue are still kind of reverberating through the case law and the courts are doing their best to determine how broadly or narrowly to interpret that decision.

We're proposing an opt-out process here which has

been used in the Second Circuit for a long time solely for practical purposes. As Mr. Donato mentioned, based on the prior voting, we're highly confident that there will be few, if any, survivors who will make the choice to withhold their consent from the third-party releases in the plan.

Those are third-party releases that, as you've heard earlier, unlock an additional $50 million in additional value for survivors. The opt-in mechanism that the U.S. Trustee is proposing, we would submit is simply unworkable in a case like this. Due to any number of factors, we have survivors that are just not responsive, whether that is because they've passed away and they're tied up with estate matters. We've had at least one motion before Your Honor to appoint an estate as a representative.

Whether there are survivors that may have difficulty just engaging with the Court process, that want to rely on their lawyers to kind of advise them but don't want to engage. Survivors that may have moved over the course of the four-year period and may not be immediately locatable. There will be a certain number that don't return a ballot. And we need to find a mechanism to address that lack of response.

We disagree with the U.S. Trustee's assertion that that kind of inaction in this case with these facts should be presumed to be a rejection of the releases contained in the plan. It would be difficult, if not potentially impossible, as

I mentioned, to track down each and every survivor who may have filed a proof of claim. Therefore, we're asking the Court to approve an opt-out procedure similar to what's been approved in the past by many courts in the Second Circuit.

I note at the outset that there's nothing in the Supreme Court's Purdue decision that suggests it's intended to overrule a substantial body of Second Circuit case law, finding that under the proper circumstances, a failure to opt out can constitute consent.

In fact, the Supreme Court's Purdue decision expressly declines to weigh in on what is or is not consent. We submit that Purdue should be read narrowly and applied only to the specific holding of the case, prohibiting non-consensual third-party releases and that any issues of consent should be dealt with consistent with established case law.

We recognize that there are cases that go in both directions, but we think the weight of the pre-Purdue case law favors construing a failure to opt out as consent, at least when it's in the face of clear and conspicuous notice that the plan contains such third-party release provisions. As authority, I direct the Court's attention to the LATAM Airlines case that we cite in our brief at 2022 WL 2206829, and the cases collected in Footnote 91 thereto.

As we noted in our brief, LATAM Airlines was decided after Judge Drain approved the Purdue plan with third-party

releases. But then, the Southern District reversed that finding that he had no authority under the Bankruptcy Code to approve non-consensual releases.

So while it predates the Supreme Court's decision, the status of play under which the LATAM court was laboring is effectively the same post-Purdue paradigm. And under that paradigm, Judge Garrity distinguished the releases found to be non-consensual in Purdue because Purdue didn't even provide an opt-out mechanism. Judge Garrity had no difficulty finding that the provision of an opt-out was sufficient to establish consent to third-party releases under long-established Second Circuit law.

Your Honor, I would observe that the cases that reject an opt-out process tend to do so as a result of concerns that lead the Court to question whether consent can be inferred under the specific facts present in those cases. For instance, the U.S. Trustee cites to the SunEdison and Tonawanda Coke cases. In both of those cases, the court was faced with a plan that would pay a *de minimis*, if any, dividend to unsecured creditors.

Where there's little or no recovery on the horizon, it's reasonable that courts might anticipate a certain amount of creditor apathy about whether or not to engage with a 100-page plan, right, whether they're going to read to Page 86 and see a third-party release. And there seems to be a concern

from the Court that creditors will have kind of written that debtor off and will just get the plan and throw it in the trash and they're concerned about somebody inadvertently being deemed to agree to a third-party release.

Your Honor, I think there's very little likelihood that survivors are going to ignore completely a plan that's proposing a $100 million contribution from the Catholic family, especially given the substantial publicity surrounding this case. Moreover, in both the SunEdison and Tonawanda Coke cases, as well as, as far as I can ascertain in the Smallhold case out of Delaware, the courts were being asked to approve third-party releases for no additional consideration being paid by the releasees.

Again, where the third-party release is essentially gratuitous, we would concede that there may be reason for a court to pause before inferring consent from an action. In fact, Judge Bucki's decision in Tonawanda Coke essentially turns on this lack of consideration as he cites to and interprets New York State General Obligation Law Section 5-1103 to require that such a gratuitous release for no consideration be granted in writing.

Your Honor, General Obligation Law 5-1103 specifically speaks to releases given without consideration. It does not purport to impose a riding requirement in order to make a release in exchange for valuable consideration

enforceable under New York law.

So in contrast to those cases, here, survivors are being presented with a plan that represents a comprehensive integrated settlement between the Diocese, the other participating parties, the members of the Catholic family, and survivors. That comprehensive settlement was negotiated by the Committee on behalf of survivors, specifically in contemplation that the participating parties would be making a significant contribution to the overall settlement fund.

Based on the Committee's efforts, survivors are being presented with an opportunity to tap into an additional $50 million from the participating parties. These are hardly the kind of free-rider gratuitous releases found to be problematic in the cases cited by the U.S. Trustee.

Moreover, there's every reason for the Court to anticipate that survivors will not only understand that the joint plan proposes third-party releases but that they will expect such provisions. Throughout the case, the Diocese and the participating parties have made clear that they intended to pursue a global settlement strategy that would include a channeling injunction and third-party releases.

In fact, the confidential abuse claim supplement that survivors were asked to return with their proof of claim in this case specifically requested information regarding any related abuse claims that a survivor might have against

affiliated entities by asking claimants to identify "any church, parish, school, or diocesan organization that their abuser may have been affiliated with."

Lastly, most if not all of the abuse claimants, as Mr. Donato already mentioned, are represented by sophisticated counsel who can and will advise their client as to the plan's third-party release provisions and the impact of failing to opt out. Because the facts of the SunEdison, Tonawanda Coke, and Smallhold cases are so distinguishable, we believe that the Court can approve an opt-out under the circumstances of this case consistent with existing case law.

The U.S. Trustee, however, argues that in the wake of Purdue, the only permissible way to determine whether someone has consented to release their claim is to undertake a state law contract analysis. We disagree. We think that existing case law is clear that a failure to take action when put on notice can suffice. But even under a contract-based analysis, we believe that an opt-out procedure is permissible in this case.

Both the SunEdison case, cited extensively in the U.S. Trustee's brief, as well as the Russell v. Raynes Associate case, which is in our brief, recognize that under New York law, silence can be deemed to constitute acceptance of an offer in the face of an offer where there's a duty to speak on behalf of the offeree. Your Honor, we would respectfully

submit that such a duty exists here.

In this case, the Committee's participation in negotiating the settlement terms and its status as a joint plan proponent is critical. In the decision rendered by Judge Bucki in the Diocese of Buffalo case, which is reported at 623 B.R. 354, Judge Bucki grappled with the question of, and I quote, "whether the Committee can stipulate to an agreement that affects actions brought by abuse claimants in state court."

Now, Judge Bucki was dealing with what we have referred to before Your Honor as the parish stay, right. Whether state court litigation against parishes and other affiliated entities could go forward and whether the Committee, acting on behalf of abuse claimants, had the ability to enter into stipulation to temporarily pause that litigation.

Judge Bucki ultimately determined that the committee indeed did have such an ability, subject to the right of claimants to reject the stipulation. In his decision, Judge Bucki observed that in addition to granting a creditors committee the right to participate in the formulation of a plan, Section 103 of the Code also authorizes such a committee to "perform such other services as are in the interest of those represented."

Applying the general rules of agency, Judge Bucki found that Section 103 empowers the committee to enter into negotiations on behalf of its constituent creditors, again,

subject to the right of the creditors, upon proper notice, to reject the resolution resulting from such negotiations.

Accordingly, in that case, Judge Bucki found that the voluntary stay of parish litigation negotiated by the committee would, in fact, be binding on all creditors, all survivors, other than a small handful of those who specifically objected to the relief being requested.

We have a similar situation here where the Committee negotiated a resolution involving both claims against the Diocese and state court abuse actions, again, subject to possible rejection by abuse claimants. From the first days of this case, the Committee in consultation with attorneys representing the majority of survivors, has taken upon itself the mantle of spokesperson and primary negotiator for all survivors.

We now have a comprehensive settlement embodied in the plan that much like Buffalo, the Committee has taken a lead role in negotiating and crafting for and on behalf of its constituency of survivors. We would respectfully submit that consistent with Judge Bucki's decision in Buffalo, the Committee here was negotiating effectively as an agent for survivors consistent with its duties under Section 1103 of the Bankruptcy Code, and that the global settlement with the entire Catholic family is the product of these negotiations.

Your Honor, under these circumstances, we

respectfully submit that any survivor that wishes not to consent to the settlement negotiated by the Committee, including those third-party releases that are being given in exchange for an additional $50 million from the participating parties, may properly be deemed under New York contract law principles to have a duty to voice their objections if they intend to countermand the acts of the Committee acting as their fiduciary.

So, accordingly, and consistent with Judge Bucki's decision in Buffalo, we believe that an opt-out mechanism that allows for that rejection by a creditor but otherwise defaults to the solution negotiated by survivors agents is appropriate under the circumstances of this case, and that it will avoid the logistical difficulties of chasing down each and every survivor that might, for whatever reason, not respond to our solicitation and our balloting consistent with New York law and prior case law in the Second Circuit.

So, unless Your Honor has specific questions for me, I would turn it back over to Mr. Donato.

THE COURT: No. I'm sure I'll want to hear from you after the U.S. Trustee weighs in.

MR. WALTER: Thank you, Your Honor.

MR. DONATO: Thank you, Your Honor.

So in addition to the U.S. Trustee objections, which as I indicated I think the others that I referenced are all

confirmation objections, the carriers also filed some objections. I had observed that LMI filed objections, and as I indicated, I think most of their objections are just a regurgitation of prior determinations that you've already read.

It was kind of interesting because the certain carriers that they call themselves also include LMI. So we were somewhat surprised. I mean, why would the carriers file a big objection with LMI and then LMI has to file its own too. So I don't really understand that. Again, as I indicated, it seems like a lot of what LMI is doing is old news. I don't know if the other carriers recognize that that's a kitchen sink approach.

The certain carriers, however, do raise a couple of issues and one of the issues they raise is they say that they have Purdue rights. Now, counsel for Interstate, I don't know, it must have been, it was probably this year, excuse me, I'm sorry about that. After Purdue, counsel for Interstate wrote a quick letter to the Judges and said, "Hey, just so you know, it's not only creditors or not only victims or survivors who have Purdue rights, we've got them too."

But it was interesting because I read the letter about 18 times, and, of course, it didn't say what kind of claim they had. So what's getting cut off? All right. And we had to kind of cajole it out of them, and, frankly, we had to file a reply that kind of guessed as to what they were talking

about. But it appears that what they're talking about is the inbound contribution claims and they're apparently talking about what they would assert are contribution claims.

So, first of all, I guess I would reference that, as far as the inbound contribution claims, if the carriers, and we put this in our reply. If the carriers are suggesting they're going to go after their own insurer or go after a parish or things like that, I mean, that's barred by the New York State's anti-segregation rule.

And, as I indicated, Mr. Carter was on the line here. So as a bankruptcy lawyer, I'll do the best I can, but he may have to answer some questions as well. But the bottom line is, at least in regard to the purported or suggested, and, again, it's kind of a shadow because I don't know exactly if they've articulated it, but it appears that they are saying, well, wait a minute here, if we go through litigation and we have a contribution claim and you're trying to cut that off, that's a Purdue right.

And so what did we do? The first thing we observed is that you can't sue your own insurer. You can't pursue your own insurer. So the carriers will never get that opportunity.

The carriers may say, well, wait a minute, maybe it's a situation where I have a settling insurer and then I'm in litigation as a litigating carrier. And then I think I have a contribution right against the settling insurer, okay. And so

in that context, they can say, wait a minute, but the settling insurer is getting protection and therefore I can't do that.

The plan contains a judgment reduction clause. The judgment reduction clause is at Sections 12 -- I'm sorry, hold on. The judgment reduction clause is at 12.2. I'm so sorry. 12.2 and a couple sections following that.

And what the judgment reduction clause says is that if that fact pattern occurs where there is a litigating carrier and that carrier asserts a viable contribution claim against a settling insurer, its express language says that the litigating insurer gets the benefit of that contribution, meaning if -- I'll do it by example.

If a judgment came in at $10 million -- thank you. And thank you.

Counsel is telling me Section 12.5.2.

So that if a judgment was obtained for, say, $100 and the insurer then said, well, wait a minute, I may have $100 liability, but I have a contribution claim against a settling carrier. Working through the provisions in Section 12 of the plan and disclosure statement, basically the litigating carrier gets the benefit of the reduction, and it's provided right there. This was worked out with the Creditors Committee and the participating parties. So there's no harm, no foul.

There's never going to be a position where any contribution claim is cut off because they have protections.

Either they can't pursue it because they can't sue their own insurer under the anti-segregation rule. Or, if they do have a right to pursue it, the plan provides them a vehicle to receive full credit for an alleged contribution claim.

THE COURT: So, Mr. Donato, is that the CPLR in the general obligations law sections? Is that what you're referring to?

MR. DONATO: No, because I think that's --

THE COURT: It's separate. That's separate.

MR. DONATO: -- dealing more with the allocation issues, except I'm prepared to talk about that, but I'm not talking about that at this point.

When we studied these certain insurer's objections, that was their big objection, right. We got the letter and all that stuff. Purdue protects us. We think that the plan and disclosure statement provide the protections for the litigating carriers so that they are not in a position where they're having any Purdue rights cut off.

We think that the combination of the anti-segregation rule and the judgment reduction provision, respectfully, we think that that addresses any concerns that a litigating carrier has in regard to an alleged potential contribution claim.

One other quick comment. These certain insurers have also raised some concerns about 8.8.3, which is a provision

that limits affirmative claims by the insured. So let's just boil this down, okay. All we're saying is, nothing in the plan creates an affirmative insurer claim against the Diocese for activity done during the Chapter 11. That's it, okay.

The insurers don't have affirmative claims against their insurer. They have a right to deny coverage. Now, Mr. Roten, or somebody, when they filed a response, they said wait a minute, what about declaratory judgment? And in that context, declaratory judgment, I think we'd be okay with that. What we don't want is, and we don't think that insurers have any right, and it's all derived from the activity in this case, and so it's directly, I believe, right before you, and I think you can make that determination.

And 8.8.3 just provides, as I said, nothing in the plan creates an affirmative insurer claim against the Diocese concerning its activities in the Chapter 11 case. So they don't make a lot of it, but they did make an observation, so I wanted to comment on that.

THE COURT: My recollection of that provision, Mr. Donato, is that it limited them to affirmative defenses or contractual that they could deny coverage. This Court isn't ruling -- in my opinion, that's a policy in another forum that would be making those on a policy-by-policy, case-by-case basis what the claimant's rights are and what the insurance policies say.

MR. DONATO: Right.

THE COURT: So my recollection of that language was it would be not as generic as you're saying on the record, but it's a specific limitation on what they can recover, notwithstanding what insurance law says they can or can't or the policies say.

MR. DONATO: Okay. I see.

THE COURT: But that it was actually, I read that as a limitation that was certainly something that the insurers would be concerned about. But you're saying that wasn't what it was intended to be.

MR. DONATO: That's not the intent of it. The intent is what I said, and we can surely fix that, I think, with some additional verbiage.

You asked about, or you made a reference to the allocation piece. That's Section 4.4.4. And I first observed that. I think the only one that made an objection to this is LMI. I also would observe that LMI doesn't have any standing to do this, no matter what type of standing they think they have, they just don't.

This doesn't affect them. This has nothing to do with them. So in that context, I would just observe that the only entity that objected is standing.

The purpose of this section is to implement Article 16 under the CPLR and New York General Obligation Law.

The first provision says that, to the extent that a perpetrator is involved, the perpetrator is at least 51 percent liable. The other provisions all end up saying that the Diocese is 51 percent liable. We negotiated that with the participating parties.

We don't think this hurts anyone. We don't think this affects anybody. And we also don't think, again, as I indicated, that LMI absolutely doesn't have any standing to assert or raise this issue. But we don't think this hurts anyone, and we thought that this made sense in order to set this up as an initial piece coming out of the Chapter 11.

THE COURT: Mr. Donato, let me stop you right there.

That's binding on the survivors unless they file an objection to confirmation. Is that's the Court's --

MR. DONATO: That's correct.

THE COURT: -- understanding of that?

MR. DONATO: That is correct.

THE COURT: So that to me seems like that's kind of a little gotcha, even though there may not be an application. Isn't that, again, something that should be in another forum to the extent that these survivors need to have their claims established? That would be subject -- I mean, the CPLR and General Obligations Law is what it is, and that would be decided in the context of another as opposed to going to a state court saying Judge Kinsella already approved these

allocations when that's really not something that's here. It's more of a default. And that's more of an issue of protection for the survivors, but I don't know what the implications are for that.

MR. DONATO: I see.

THE COURT: But to have that kind of buried in a disclosure statement and plan and have that go into some other litigation at some point to be binding, I don't know that the Court's comfortable notwithstanding any issues on standing of LMI.

MR. DONATO: I see. Okay.

THE COURT: The Court has its own concerns on that.

MR. DONATO: Okay. Sure. Understood. Understood. We think it's appropriate, but we do understand your comments.

Obviously, there's going to be a lot of people talking about the fact that you shouldn't approve the disclosure statement today, but I would just respectfully submit that the survivors have waited. They've waited enough time.

There's been more curve balls in this case. No one could have ever anticipated the Supreme Court would change the key aspect of the law. I mean, we knew it was there, but we didn't know what they would do.

So we were ready to go to confirmation. Frankly, I think confirmation was going to be today. It was around early

November. And then we got the curve ball from the Supreme Court, which is fine. We're addressing it, et cetera. But I really believe at this point, as far as disclosure, there is just no issue. Like I said, I think my adversaries know more about this case than I do.

I mean, everybody knows every issue. That's what's before you today. Just is there enough disclosure so we can move forward to a confirmation hearing? We think that we absolutely have established that.

I guess I'll just make one additional comment, which is there are some steps that I think we have to take to get to confirmation. And I think it's probably the two that I was referencing before. The form of the ballot, the solicitation issue that obviously Mr. Walter was addressing and Ms. Champion will be addressing.

And then, the other is what discovery is going to be authorized. And I understand. You indicated you worked on that. I fully understand that.

I guess what we're asking for is approval today and we're asking for a confirmation hearing in the third week of January. We think that it's appropriate. As I said, I did cover this with the mediators. I want to make certain that we give a good shot at trying to get this done. But I don't think the survivors should be made to wait any longer.

I'd like just to reserve an opportunity for rebuttal

concerning any of the arguments, and I thank the Court for its time.

THE COURT: Certainly. Thank you.

Mr. Kugler, before we hear from the objecting parties.

MR. KUGLER: Just some brief comments, Your Honor. First of all, we agree really with the comments from Mr. Donato and the debtor. It's unusual in these cases for the committee to be so simpatico with the debtor under these circumstances. And we have been for months, or a year, longer and we continue to be. And in the face of that, we really need to find a way to move forward. We have a deal and the survivors support the deal. They supported it 303 out of 305 ballots already. And they are going to support the next one in the same way.

I put my self in the shoes of survivors and it's almost absurd to try talk with them about CPLR provisions and judgment reductions. They're like, What are you talking about? We understand. If the plan gets confirmed, that's it. We're going to get some money. We can't tell how much yet, but we're going to get some money. And it's done. It's done.

I was talking to a survivor at a conference last week. They're not focused on any of this. The finality of it is crazy. One survivor told me that they got the check, and it sat on her kitchen counter for three months. She couldn't open it. She couldn't hardly look at it because it represented so

much in terms of what she had carried her whole life.

That's what survivors are focused on. They're not focused on all this stuff that all these smart attorneys in this room are fighting about. And I think we need to get it done because of that. We need to go there. And I just -- I -- you know, so I think about Purdue and what Purdue says.

When we got the last ballots, we contacted one of the two folks who had balloted against. We said, "What do you -- what's -- what are you opposed to? Or whatever. And they're like, "Oh, we don't care about the releases. We don't care -- we don't care about any of that. We just are never, ever going to be able to ballot in favor of something from the Diocese after what happened to us."

I respect that. I get it. That's okay. It is got nothing to do with opt-in, opt-outs. It's got nothing to do with the Sacklers and opioid crisis and all that. It's got to do with them and what they're dealing with. So it's really hard for us in this courtroom, as professionals and thoughtful attorneys, to try to create these provisions and stuff, and then transport it to the survivors in a way that has any meaning to them at all.

And so I think we have to keep that in mind. And I -- two things, and then I'll sit down real quickly. Another one of the Committee members is on the phone, Kevin Lawrence. I want to recognize him because he's been one of the very, very

committed survivors in this case. And so he's on the phone as well. And so -- and I would also ask that the Court -- Dr. Kevin Braney and the chair of the Committee's here -- he'd like to get up and make a brief statement, just sharing the survivor perspective. I know the Court gets it, but I think it helps to hear from survivors because we can get ourselves way off track. And we're going to hear a whole lot from the insurance companies that's going to go way down a whole bunch of paths that no survivor's ever going to understand or care about.

They want the case done. They want to have that moment when they're looking at the check on the counter. Maybe they can cash it, maybe they can't. Maybe they can open it, maybe they can't. But they want to have that moment. And I don't think there's any quarrel about that. So that's all I have to say, Your Honor.

THE COURT: Thank you, Mr. Kugler. How many how many of the survivors are represented by counsel? Somebody had referenced a large percentage before. I didn't think the number was that I thought it was -- if you don't know, I understand. I just --

MR. ROBERT KUGLER: I don't know. It's a large, large percentage. But whether they're represented by counsel or not, these are seriously damaged people, and some of them are just never going to get there. And it's not because they

care about third-party releases. It's not because they care about any of it. They're just never going to get there.

We did really well on the first go round, with 303 out of 305, and that was without knowing we had to reach out to the remainder and urge them to vote. So I'm still pretty confident we're going to do pretty good. So -- but there's going to be just some that, between us and their own counsel, we're just never going to get to. I mean, I can just about name them. I've talked to them enough. I know.

So, anyway, yeah, I don't know the exact percentage, but it's a high percentage.

THE COURT: Thank you.

MR. ROBERT KUGLER: Thank you.

MR. WALTER: Your Honor, I -- we -- the attorneys representing just the Committee members collectively represent north of 60 percent of the survivors in the case. And I know there are other survivors as well, just to give you --

THE COURT: Thank you.

MR. WALTER: -- some perspective.

THE COURT: Thank you.

Mr. Elsaesser, before we hear from the objectors, I forgot we have the participating parties in the room as well. So please come up.

MR. GLASNOVICH: Thank you, Your Honor. And I'll be brief. I concur with all of the -- on behalf of the Parishes,

I concur with all of the comments from Mr. Kugler and Mr. Donato and counsel -- and counsel for the Diocese.

But -- and the I -- know that the frustration level for the delays from -- for the survivors. Nothing that the Parishes have suffered from the delay remotely compares to what's happened. Of course, again, we heard today about another death. And it's -- but the Parishioners are continuing to pay the entire freight for the case. And in bankruptcy, we do a lot of work on tracing funds, but one thing we know is that every dollar that covers the administrative expenses of the case, and every dollar that is in the settlement pool overwhelmingly can be traced directly back to a parishioner within the Diocese -- the Diocese of Syracuse.

And the Parishes, while certainly have nothing in the way of a comparison as far as suffering, as far as the -- its survivors have, they're anxious to rebuild and reconcile, and they're anxious to go back to the work of executing the mission of the church and building back their finances, which will be dramatically impacted, of course, by the ultimate funding of the settlement on the effective date of the plan.

And in Spokane and Northern Alaska and the Jesuits in Helena, Great Falls, Billings, Duluth, Agana, also known as Guam, and Santa Fe -- just, by the way, the biggest temperature drop I've ever experienced traveling from Duluth to Guam was 118 degrees, which is really something when you get off the

plane.

But in all of the -- the importance of all of those cases is that they were all under Purdue. Because in the Ninth Circuit and in the Tenth Circuit, we lived under -- the same -- they -- that the -- American Hardwoods and Lowenschuss and whatever the case was in the Tenth Circuit -- we've lived through this. And I was just talking with the Mr. Roten yesterday; we were talking about -- yeah, in Helena, we had 387 claims, and we had unanimous consent in Helena. But in all of those cases, we were within a circuit, or circuits, that prohibited non-consensual releases.

And just as an example, in the Helena case, Mr. Roten and Ms. Sugayan, who I believe represented Great American at that time, insisted on a buyback provision as well as a channeling injunction because of the concerns of the cases in the Ninth Circuit that were basically, essentially, the same as Purdue. So it's just not as big a deal as people are making it out to be. And the risk of a -- of this being perceived as some sort of coerced consent or default consent just doesn't make any rational sense in the context of what we know the facts are on the ground, which is that there that there has been and will continue to be ample disclosure and ample attention.

And if we get two non-votes or six non-votes, we'll -- you know, our work isn't done; we'll deal with that.

But to delay this further, even though I strongly -- on behalf of the Parishes, we are as strongly as everyone else is that we think it's -- I -- we owe a debt of gratitude for -- to Mr. Winsberg for immediately bringing the mediation approach to the attention of the Court before the last hearing, which had a steamroller effect. And there's just simply no reason that we can't get into substantive mediation with the carriers. We've all done this before numerous times. We have a lot more information now because of the settlements and what's occurred in Rockville Center and the -- beginning to occur in other cases.

And I -- because all of our prior cases all involve settlement of insurance, I couldn't -- we -- certainly, on behalf of the Parishes, none of us want the post-confirmation hangover of not having the insurance carriers resolved. But we have to go with what we have until we don't. And so I would -- you know, I can assure the Court on -- certainly, on behalf of the Parishes that we'll do everything possible in mediation to encourage resolution with the carriers. But we believe that there should really be no further -- we don't need to go out to March or April for a confirmation hearing. There's ample time within the mediation.

These cases have an enormous emotional impact beyond what you see in other bankruptcy cases. It just does, including other mass tort cases. It's -- it is -- it ending it

and getting through this process and getting the non-monetary covenants in place and getting the archive in place, and all of those things bring an amount of closure that everyone in this room, I think even maybe Your Honor, would love to see.

And so I urge you to approve the disclosure statement with, obviously, the input that you've already given Mr. Donato on the points that may need some adjustment to be more clear in what the treatments are. But I've had a chance to see, in all of these cases, what happens on the other side. And it's just great. It's hard to say "It's just great." I don't mean to do that -- but in any way minimize the -- to the -- to survivors. But the -- just exactly what Mr. Kugler was describing occurs, and it's a -- it's something that we all are aiming for. And so I would urge you to approve the disclosure statement with what additional conditions or changes that you feel are appropriate, but also to set the confirmation hearing. And I am sure that Judge Chapman and Mr. Finn appreciate, and certainly, all the counsel and all of their families appreciate the urgency of these matters. Once we received -- we reached agreement in Santa Fe, the judge set the confirmation hearing for two days after Christmas, and no one complained about having to rearrange their travel and so forth to do that. So please set a confirmation hearing soon. And on behalf of the Parishes, schools, and other affiliates, thank you.

THE COURT: Thank you.

MR. ROBERT KUGLER: Your Honor, I have some statistics for you --

THE COURT: Thank you.

MR. ROBERT KUGLER: -- responsive to your question. There's 433 claims, which includes duplicates and late claims. Only 24 are not represented. So that's 5.5 percent by our lawyer math at our table. So that's what we know.

THE COURT: Thank you. That's very helpful. Thank you, Mr. Kugler.

MR. ROBERT KUGLER: You're welcome.

MS. TEMES: Your Honor, I apologize. So only 11 of those did not respond.

THE COURT: Thank you.

Before we turn to the objections, is there anyone else who wishes to be heard in support of the motion to approve the disclosure statement and solicitation procedures?

(No audible response)

THE COURT: I think this may be a good -- oh, I'm --

MR. ROBERT KUGLER: I was going to ask if we could take a break.

THE COURT: I was just going to say, this might be a good time to take a break. Again, we have a cafeteria on the fifth floor. I'd say 30 minutes, ten after 1:00. Grab a quick snack, and then we'll all regroup, recognizing that we have a lot of material to cover this afternoon. And court is

adjourned until 1:10.

THE CLERK: All rise. Court is adjourned.

(Recess at 12:40:41 p.m./Reconvened at 1:13:30)

THE CLERK: All rise. You may be seated. Continuing with today's calendar, the Diocese case, 20-30663, the Roman Catholic Diocese of Syracuse, New York.

THE COURT: Thank you. We heard, prior to the break, the presentation of the plan proponents in support of the approval of the disclosure statement as well as the solicitation procedures. And now we'll hear the objections to those.

Ms. Champion, you're sitting closest, so why don't we start with you, and then we'll move through the insurers as well.

MS. CHAMPION: Thank you, Your Honor. Erin Champion for the United States Trustee. At the outset, I just want to say that the United States Trustee is a -- it's an easy target here to blame for delay. You know, and we've done nothing to delay by objecting in this case. But in reality, Your Honor, we're really trying to move this case along, you know, under applicable law. It's not that we're trying to delay payment to survivors; we do recognize the importance of that.

And for the United States Trustee not to object here to what the plan proponents propose would be to sign on for this Court creating a whole different and entirely different

standard of consent and what that means, and it would be a sliding scale with every future case that comes before the Court. And the United States Trustee has an obligation to make sure that that doesn't happen, and, of course, we're going to object, and it's not meant to delay the case. And it's -- you know, we're an easy scapegoat, I think, there, and that's -- it's unfair.

Your Honor, it's now been made clear by the United States -- excuse me -- Supreme Court.

MR. ROBERT KUGLER: I'm sorry. I'm sorry. We understand that there's some technical difficulties and people on the phone are unable to hear.

MS. CHAMPION: Oh.

MR. ROBERT KUGLER: They think you're muted or something. They're telling me they can't hear anything.

THE COURT: Okay. Hold on a second. Yep.

MR. ROBERT KUGLER: I'm sorry.

THE COURT: Hold that thought.

MS. CHAMPION: Okay.

Thank you, Mr. Kugler. I appreciate that.

(Pause)

AUTOMATED VOICE: Welcome to the audio conferencing center. Please enter a conference ID followed by pound. You are now joining the meeting.

THE COURT: Can the parties on the phone hear the

Court?

AUTOMATED VOICE: You've been muted. To unmute yourself, press star six. You are no longer muted.

THE COURT: Can the parties on the phone hear the Court now? If you could email your attorneys.

Ms. LaFave, I believe one of your clients is on the phone. Or if someone on the phone can unmute and say that they can hear the Court to confirm.

MR. ROBERT KUGLER: We can hear. Thank you.

THE COURT: Thank you. Thank you.

Ms. Champion, if you'd continue.

Thank you, Mr. Kugler.

MS. CHAMPION: Thank you, Your Honor. As I was saying, the United States Trustee here is not trying to delay this case. Completely to the contrary, we want to move this along, but in accordance with the law. It's the debtor that chose this forum. It's the debtor that's in bankruptcy and must follow the rules of the Bankruptcy Court. And it was their choice to do that. And now has -- that debtor has to follow the rules, which we know now from the Supreme Court, is that a debtor can only provide a third-party non-debtor release with consent.

And, Your Honor, that consent requires an affirmative expression of assent. And the impact of that decision in Purdue in this case should be addressed today, as it really is

at the center of the plan proponents' plan that the disclosure statement describes. And I would urge -- and I think all the parties agree -- we don't want to put these issues off until confirmation. We want to move this case along. This is not a confirmation issue. This is -- issue is in direct relation to the disclosure statement because the disclosure statement cannot have unconfirmed provisions. And as it stands right now, the plan is unconfirmed -- unconfirmable.

And, Your Honor, if we delay that issue, it's going to be too late. By then, again, we will have spent potentially millions of additional dollars litigating these issues, which could ultimately result in another failed confirmation attempt. The solicitation of an unconfirmed plan already costs the estate hundreds of thousands of dollars. Let's not make that same mistake again.

And that, Your Honor, is why it's worth making sure that this is done correctly and within the parameters of the Supreme Court's ruling in Harrington v. Purdue Pharma. And, Your Honor, there is a simple, easy solution for that, and that is to require the debtor to obtain actual affirmative consent.

Your Honor, there's essentially three overall reasons why the Court should deny the debtor's motion -- the plan proponents' motion and not approve the disclosure statement. First of all, as I said, the disclosure statement describes a plan that's unconfirmable because it contains actual

non-consensual third-party releases, which I'll get to explaining those. It also provides third-party releases that aren't being -- that wouldn't be approved on affirmative consent. And the third -- and the Code does not allow for that. And the third point, Your Honor, is that the plan proponents are inappropriately attempting to guarantee that consent through coercive and punitive language.

So addressing the first point, Your Honor, that the terms of the plan are in direct contradiction to the U.S. Supreme Court's holding. In the ruling, the Supreme Court held that neither Code Sections 105(a) or 1123(b)(6) authorizes non-consensual, non-debtor releases. The Court reasoned that 1123(b)(6) instructs that the plan provisions cannot be inconsistent with applicable Code provisions.

So where does that leave us? That leaves us -- you have to look to state law because it just simply isn't in the Code. Here, Your Honor, this disclosure statement describes a plan that contains provisions that are, indeed, inconsistent with applicable Code provisions because there is none. A party seeking to include such non-debtor releases, Your Honor, in a bankruptcy plan, must show that they're consensual, which, as I mentioned under state law is what we have to look to. It requires that third parties come forward and state that -- state their consent affirmatively.

Your Honor, in the Tonawanda Coke Corp. case from the

Western District, Judge Buckeye was very clear and succinct in applying a contract model to establish the required consent. And that's not a hyper-technical argument, as what was alleged in the plan proponents' memorandum and reply, I think. To the contrary, it's very simple: There's just simply no authority in the Code to authorize it, and, therefore, you have to find it somewhere else. And that is in state law.

In the plan proponents' reply, Your Honor, they do rely on several pre-Purdue cases, where a plan was confirmed with opt-out third-party releases. But that's no longer the standard; that landscape has completely changed. And that was noted by Judge Goldblatt, Your Honor, in the Smallhold case.

After Purdue, there does not appear to be a principled basis for authorizing opt-out third-party releases, even if such releases might be supported by strong policy arguments, which in a case like this, could be relevant. But even with those arguments, Your Honor, it still can't be approved. Judge Goldblatt even acknowledged that his own pre-Purdue decisions in allowing an opt-out mechanism would not be appropriate now.

So, effectively, Your Honor, there are no more rare and exceptional cases under the old standard of Metromedia. There's no sliding scale of cases. There's no "Well, because this case has a hundred million dollars to distribute versus in Tonawanda Coke, 400,000" -- that is not relevant to the

analysis. There cannot be a different standard depending on what kind of debtor becomes -- or what kind of debtor is before the Court. It's one uniform standard, and that is: Consent has to be manifested with an intentional affirmation.

Also noted, Your Honor, by Judge Buckeye in Tonawanda Coke, adequate information, again, includes a representation that the proposed plan is one that can be confirmed. I don't know how the plan, as described by the disclosure statement, could be confirmed under the standards, and therefore, it should be denied.

Your Honor, next I want to turn to certain plan provisions that meet the actual literal definition of a non-consensual third-party release. As noted in the U.S. Trustee's objection under Plan Section 12.7, all holders of channel claims -- and that includes all abuse claims, but also other stakeholders such as Medicare claims and extra contractual claims or claims against settling insurers -- are subject to the release provisions in the plan. The Medicare claims, Your Honor, as defined in the plan, relates to payments in respect of any abuse claimant -- any abuse claim, including claims for reimbursements made to abuse claimants and claims relating to reporting obligations. But there doesn't appear to be any mechanism for notice let alone voting for the Medicare government agencies. Yet they are still subject to control the trust and whether the trust makes the determination to pay them

or not. And they are, Your Honor, bound by the releases as a channel claim under the terms of the plan. This is the very definition of a non-consensual third-party release that's not permissible under the law, and the Court has no authority to approve that.

Your Honor, it also includes inbound contribution claims under channel -- under the definition of channel claims -- who are not entitled to vote, and they're not entitled to even receive a copy of the plan and disclosure statement, but they're deemed to consent to the release and injunction provisions. And the debtor might argue, well, they're being paid in full, or you know, they -- their claim is not unimpaired. But how can it not be unimpaired if they're agreeing to something like a release that's affecting their claim? By that very nature, it makes them impaired, Your Honor.

And this is the same -- this is also true for extra contractual claims defined under the plan, and that's claims against settling insurers for damages with respect to settling insurers' handling of claims, bad faith, various conduct. And, Your Honor, although there are a limited number of exceptions to the channel claims -- and for reference, Your Honor -- for Your Honor, it's Section 12.2.2(a) and 12.2.2(b). Those exceptions do not extend to the supplemental insurer injection -- injunction -- sorry -- which provides that holders

of all channel claims, with no exception for participating or non-participating abuse claimants, are enjoined from taking action against settling insurers.

In other words, Your Honor, the opt-out mechanism doesn't even impact that injunction. There's no way around that other than to say that is a classic non-consensual third-party release that cannot be approved by this Court. And any approval relative to those releases, Your Honor, would be subject to review by the District Court under Stern v. Marshall. And that should be explained in the disclosure statement and plan, and it's not.

My next point, Your Honor, that the plan proponents' attempt to get around Purdue by asking the Court to treat inaction or silence or inadvertence as an expression of consent. Your Honor, the plan's inclusion of a "optional form" to opt out the releases does not provide a true opportunity to affirmatively and unambiguously demonstrate their consent to third-party releases. If the claimant doesn't return the optional form, the claimant is compelled to release its ability to even bring a claim against certain non-debtor parties. That's not affirmative consent for a claimant to just not fill out a form that's actually titled "optional" for that to be considered consent.

Judge Buckeye rejected that approach in Tonawanda Coke Corp., as I'm sure Your Honor is aware. He found that any

proposal for a non-debtor release is an ancillary offer that becomes a contract upon acceptance and consent. And with no authority provided for under the Bankruptcy Code, a proposal for a non-debtor release is governed by state law. Judge Buckeye did not limit his ruling in any way, did not say "just because of the facts of this case." That's because this is a binary analysis. There is either consent or there is not, and you don't have to go into the various facts of the case to justify whether a consent is appropriate, because that just simply is no longer the standard before the Court. And while Judge Buckeye did reference the dollar amount of the distribution under the plan, it was in the facts section; it was not part of his analysis whatsoever.

Your Honor, Judge Buckeye's decision was also bolstered by Judge Goldblatt's analysis in the Smallhold case. And it was raised in the plan proponents' memo of law in response to the U.S. Trustee's objection that we pull selective things that we liked from the Smallhold case in support of our position. That's not really quite true. While we may have disagreed with the ultimate holding in that case, Judge Goldblatt analysis is spot on. It's the only case that has an extensive, thorough analysis consistent with Purdue, and that should also be applied here.

According to Judge Goldblatt in the Smallhold case, the theory that state law can be disregarded on a default

theory applied in some cases pre-Purdue can no longer be applied. "In the post-Purdue world" -- this is a quote from Judge Goldblatt -- "the non-consensual third-party release is now per se unlawful." And in the absence of that default theory of consent, there's no other justification for treating the failure to opt out as consent to the release that could stand any analytic scrutiny, because, again, it's "per se unlawful." And that relief is just not -- and, therefore, you know, the relief isn't even available as a matter of law, Your Honor.

Again, you know, it was the holding, not the analysis, that we disagree with. And this is because in the holding -- Judge Goldblatt's holding, he -- the act of voting on a plan while remaining silent relative to a non-debtor release was a sufficient expression of consent. But our position on that, Your Honor, is that it looked like Judge Goldblatt relied on cases that really didn't support such a finding. And -- but rather, those cases that he cited emphasized the importance of notice as a prerequisite to consent. But it's the United States Trustee's position that whether is a -- whether there's sufficient notice is an entirely distinct question from whether there's been a manifestation of an -- of intent. And here, there has not been -- or there's -- under the mechanism proposed by the plan proponents, there would not be.

Your Honor, he -- Judge Goldblatt also, though, did reject certain post-Purdue decisions relied on by the plan proponents in their responsive papers, including Robertshaw, BowFlex, and Invitae. And he rejected those because they didn't really have a sufficient analysis, which is why in the Smallhold decision the analysis is so important. It's really the only case that goes into the extent and the details of the Purdue case and the analysis on that -- on the case before him.

Judge Goldblatt said that the part of the analysis that those decisions -- referring to Robertshaw, BowFlex, and Invitae -- the part that they omit is the obligation of a party -- is that the obligation of a party served with pleadings to appear and protect its rights is limited to those circumstances in which it would be appropriate for a court to enter a default judgment if a litigant failed to do so. And again, that is no longer the case in the context of third-party releases. Instead, Your Honor, Judge Goldblatt found the Ebix court analysis from the Northern District of Texas analysis to be more persuasive. In that case, Your Honor, the bankruptcy Court found that the release of the non-debtor's claim against another was more accurately construed as one of a contract. And as a result, that court -- even though it confirmed a plan, it did so, in all respects, except for the releases, making a point that they were just not permissible under the law.

And, Your Honor, as we've -- as you've heard before

already this morning, you know, the issue of whether an opt-out mechanism is a form of consent is not a novel one. Courts prior to Purdue, however, still rejected that notion in some cases, that silence could be a manifestation of consent. And two of those cases, Your Honor, are the In re Congoleum Corp. case and the Emerge Energy Services case. And it's cited in our papers, Your Honor. And based on those reasonings in those cases and the reasonings that we have before us from Judge Buckeye and the Smallhold case, the Court should also reject as such a notion here that silence could somehow be considered consent.

Your Honor, moving to my next point, the Court should also deny the motion and approval of the disclosure statement because the plan proponents seek to extract consent by coercion. Under the proposed plan, a claimant has the option to opt out of releases for the benefit of third parties, as I mentioned, by submitting a separate form from the ballot that itself is entitled "optional." There's lots of reasons why a claimant might not fill that out: "It says 'optional.' Okay. I can toss this in the garbage; I don't need to look at this." They might not even read it. In addition, Your Honor, the language contained on the optional form discourages any claimant from electing to opt out.

Rather than incentivizing claimants to opt in, the proposed plan actually punishes claimants for wanting to retain

their rights. It's unlikely that any claimant would want to check that box, based on the language that's proposed. And the effect, Your Honor, is that the plan proponents are almost guaranteeing that no claimant will elect to opt out. And, indeed, Your Honor, Judge Goldblatt, again, in Smallhold, noted that the issue of coercion is a very serious one because the concern is that such a practice discourages creditors from voting, and it might distort the process. And that's exactly what could happen in this case if the Court were to approve this type of ballot and optional form.

So in the plan before Your Honor, if claimants vote in favor of the plan, or if they don't vote for the plan at all and are bound by their inaction, or if they even vote to reject the plan but don't elect to opt out of the releases, they're bound to accept it. So they get X plus Y; they get debtor's assets, and they get participating party's assets, for simplistic argument, Your Honor. And in exchange for that, they surrender their property rights against the joint tort feasors.

However, if the claimants check the box on the optional form, indicating they wish to be treated as a non-participating abuse claimant, they actually get less than X; they get less than what they would normally be entitled to from the debtor's -- from the estate assets. And not only, Your Honor, is that entirely unfair and punitive, it results in

different treatment within the same class of creditors, in violation of 1129(a)(4). And if that's -- if the plan proponents submit that that's not the case and that's not how that works, that should be very clearly spelled out in the disclosure statement, and it is not.

Your Honor, it also begs the question whether the respective contributions of participating parties -- do they change depending on whether claimants choose to opt out. And so how? That should also be addressed in the disclosure statement: what the impact is if certain parties do elect to opt out.

Your Honor, I do want to make a few additional points -- additional considerations for the Court to consider in denying the motion and the approval of the disclosure statement. Again, not that the United States Trustee has to justify why we objected to the disclosure statement. For one, obviously, it doesn't comply with the law, and, you know, we're obligated to do that. But also, Your Honor, it's important that the Court consider the potential impact of the decision in this case on all future cases in the Northern District of New York that come before Your Honor.

As I said, under the terms of the plan, there's really no standard for consent because there just isn't a basis to know whether someone consented unless there is some showing of an affirmative expression of assent in an opt-in format or

something akin to an opt-in format.

As I said earlier, the rules of opt-out can't change case-by-case. What constitutes consent should not vary by the facts of the case, including the amount of money to be distributed. Your Honor, absent that, you know, the floodgates could open with all types of provisions that debtors might try to sneak past creditors. To require an opt-in or similar mechanism, that's the ultimate gatekeeper.

An example of why this -- how this could play out: In a case where you have just a basic, very simple -- maybe a Subchapter 5 case, where you have a principal, who was also obligated on guarantees, wants to discharge the principal's liabilities under that guarantee -- you could easily put that in the plan in an opt-out mechanism, and no suspecting creditor might see that, and a creditor could be bound to that term by just not looking at it.

Your Honor, moreover, it -- this case in particularly is appropriate for an opt-in mechanism. We've heard already that we have a known group of claimants of approximately 400 or so that are nearly all represented -- I think maybe all but 10 or 15, I think was said. And in response to the solicitation of the third amended plan, claimants voted in favor of the plan. And as was indicated, you know, there was overwhelming support -- over 300 creditors and -- 300 survivors. That demonstrates that the survivors are very capable and very

involved in this case. And I think that was even said by Mr. Walter. This is not a case of apathy. The survivors here are very involved in the stakes in this case. And there's no reason to believe that they wouldn't equally -- be equally capable and involved in voicing their consent to the releases.

And I think it was Mr. Donato maybe that said that those survivors -- they have excellent and sophisticated counsel to help them. And like we said, all -- nearly almost all of them have that protection of counsel.

I do want to address a footnote that was raised in the plan proponents' reply. It was noted that Judge Sotomayor pointed out the practical impossibility of successfully confirming a mass tort case in an opt-out -- per -- in confirming mass tort cases in an opt-out procedure -- I'm sorry -- in an opt-in procedure. But that's not quite -- exactly -- that was not the whole story of what she asked at the hearing. She actually did ask, "What does consent look like?" But she also acknowledged -- and this is a quote: "You have states, and so they could consent. They're an identified party. But there's, I don't know, thousands if not hundreds of thousands, maybe millions of personal injury claims." Like those identified parties that Judge -- Justice Sotomayor pointed to, we have identifiable, quantifiable parties here that can and that have already proven their ability to participate in the plan process.

And just a couple of brief notes on some other issues that were raised in the U.S. Trustee's objection before I conclude. And, Your Honor, one of them is with the -- with respect to the exculpation provisions that are impermissibly broad. And again, the plan provides no basis for the breadth and scope and -- of those exculpation provisions and, therefore, violates 1129(a)(1) and (3).

The range of those parties -- it's so broad that it likely includes parties who performed no duties whatsoever or at all in related to the case or the plan. And again, inappropriately, like the first disclosure -- or the third amended disclosure statement, extends to post-effective date activity. But exculpation should only extend to conduct that occurs between the petition date and the effective date.

And, Your Honor, this is not Groundhog Day here, as Mr. Donato pointed out. This is also, likewise, in contradiction to Purdue because certain non-debtor parties are exculpated under the plan without consent of affected parties. And, therefore, Your Honor, on that basis, we would also ask the Court to deny the approval of the disclosure statement unless those provisions are appropriately narrowed.

And then, finally, Your Honor for the -- with respect to the United States Trustee fees, I mean, obviously we're not in this case to get paid our fees. That's a statutory provision; that's not our motivation. And to be honest, it's a

little bit offensive to hear that, you know, that we just want to get our fees in this case. It's absolutely not the case.

Your Honor, what we're looking for in any type of approved disclosure statement or plan with respect to U.S. Trustee fees is that the reorganized debtor has the obligation to pay quarterly fees based on all monies distributed or paid under the plan, and that the plan --

Oh, the plan also provides further that payments made to the trust by anyone other than the Diocese and by the trust to anyone are not to be considered disbursements. Your Honor, that's not appropriate. It does not comply with 28 U.S.C. 1930(a)(6) because it doesn't require payment of quarterly fees on all qualifying disbursements. And the term "disbursements," Your Honor, while it's not defined in the statute, it must all -- it must include all post-confirmation distributions from the bankruptcy estate to creditors. And, you know, the debtor's choice -- or the debtor's choice to utilize a plan-created entity, like the trust, to effectuate the payments to certain creditors doesn't alter the debtor's obligation -- the statutory obligation to pay quarterly fees that are -- that accrue and are imposed as a result of the monies that must be paid under the plan.

So, Your Honor, also in that same respect, the definition in the disclosure statement with respect to Chapter 11 quarterly fees -- they are statutory rather than

administrative claims and are not subject to the same obligations of administrative creditors.

Your Honor, for all of these reasons, the United States Trustee respectfully submits that the disclosure statement should not be approved because of the plan provisions that contain unconfirmable provisions. And to continue on such a path would be just a fruitless exercise and a waste of State resources. We're asking the Court to get to that issue right away so that can be corrected and the debtor can get the affirmative votes that it needs. It -- from what was heard -- what was said in court today, it sounds like there will be a lot of support for this plan. And with all these very sophisticated, excellent attorneys involved in this case, there's no reason why the debtor can't find some way to get the necessary votes and the necessary consent for these releases. Thank you, Your Honor.

THE COURT: Thank you. Ms. Temes, just a couple questions. So reading between the lines, so it's the U.S. Trustee's position that for -- if the $100 million was approved, that you're entitled to quarterly fees on that $100 million because it's being funneled through the trust that's created through the bankruptcy plan; is that right?

MS. TEMES: Right. That's correct.

THE COURT: And how do you respond to the plan proponents' correct statement that the Court specifically said

in Purdue that we are not opining as to what consent is?

MS. TEMES: Right. Your Honor, that's -- then they -- there's no -- under Purdue, it just says, "You can't have the non-consensual third-party releases, but we're not saying what consent is." So we have other resources before the Court -- the Tonawanda Coke decision, the Smallhold decision -- that say look to state law for that consent. And that's what I would rely on, Your Honor, not Purdue. Purdue just stands for the proposition that non-consensual third-party releases are no longer acceptable.

THE COURT: Thank you.

MS. TEMES: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Winsberg, you're up next.

MR. WINSBERG: Thank you, Your Honor. Harris Winsberg on behalf of Interstate. For purposes today, just for the record, we incorporated our previous disclosure statement objections into this disclosure statement objection. You've already -- Mr. Donato's right: A lot of those objections were overruled. But just for purposes of the record, we just carried them forward. I'll focus mainly on the Purdue issues.

THE COURT: Thank you.

MR. WINSBERG: I read -- Your Honor, I read the omnibus reply brief and the supporting memorandum of law that the plan proponents put together in this case. And this case

needs to be resolved in mediation if the plan proponents want to achieve their stated purpose to exit bankruptcy in a timely manner -- or, as Mr. Donato calls, the main event. What they've come up with today is not going to achieve that stated goal.

The structure doesn't work, and I'll get to why. But there is a structure that does work, and it's in Rockville Center. And Your Honor, is probably aware of that, that we filed -- there's a disclosure statement. There's a plan. There's a motion for 363 buybacks with the insurers. Judge Glenn ruled in the disclosure statement how that's going to proceed very quickly, and that structure works.

And by the way, in that structure, the ballots don't have opt-in or opt-outs. And so, like I -- a lot of these issues that we were talking about today can be avoided through a constructive global resolution. And so I just wanted to raise that while we're going through the -- I'm sorry, Your Honor. You have a question?

THE COURT: Mr. Winsberg, they have the prepackaged scenario down in the Southern District of New York that we don't have up here in New York -- Upstate New York, in the Northern District. So I guess I would just throw that out as a -- as kind of a wrinkle in that there's a really quick, easy -- avoiding opt-in and opt-out in the Northern District is much different than the Southern District.

MR. WINSBERG: Understand, Your Honor, but it doesn't mean that similar type of process -- maybe not on the rapid-fire, so to speak, that they have down there. I understand that they don't have that here, Your Honor. But, Your Honor, has been -- makes yourself very available to the parties in this case on expedited schedules over time. And I am sure, with all the legal talent in this room, that -- maybe not over the course of a month and a half, but it could be done; it is achievable. And it's done in a way that is compliant with Purdue, and you don't get into a lot of these issues that we're -- that you're wrestling with right now.

So here, they've contested our right as a party-in-interest under Kaiser Gypsum. They criticized us for citing to the transcript of Kaiser, where the judges actually talked about Article III and the like, but then they're citing Purdue Pharma transcripts as support for consent. So which is it?

We were not -- we were excluded from the drafting process in this -- and with this plan. Your Honor has under advisement the discovery disputes. They've resisted -- at least at that -- a couple hearings, they resisted doing an updated proposed confirmation order. Your Honor took that under advisement, said, "I'm not prepared" -- I think you said you weren't prepared to rule on it. But that proposed order that's on the docket, indisputably, doesn't comply with your

prior orders.

The Diocese successfully persuaded the Court to stay the coverage case. The Committee -- in fairness, Committee wanted to move it forward, but the Diocese proposed to stay that case. And now, when we -- when they're faced with like a straightforward Purdue objection, that there's no statutory authority to release any claims we may have against over 200 non-debtor entities and their related persons, which is like friends and family, very broadly defined under the plan, they come back, and their answer isn't to remove that language -- and we haven't consented -- to remove the injunctions and releases as to the insurers, but to say that that our claims are weak, are speculative, and that it's actually permitted here.

So we're left with -- basically, what they're asking the Court to do -- and I was thinking about this last night -- is they're really asking you for declaratory relief -- through the plan, on a process Mr. Donato has said he wants end of January or wherever he wants the confirmation to be.

On that time frame, to conclude that our rights as a third party are terminated -- over 200 non-debtors and affiliates, friends and family -- that's contrary to Purdue. I'm not sure the Court has subject matter jurisdiction to do that. I don't believe the Court could even do it in a -- through a plan process. It'd have to do it through a lawsuit

if it -- if the Court concluded it had -- it would have to be related to -- I don't think the Court has jurisdiction, frankly, on it.

And it's done in a way that's -- just complete -- violates due process of law. I mean, it's going to set up a massive issue on appeal, a legal issue. And for what reason? If the claims are so weak and speculative, why are they in the releases and injunction provisions?

And I'm not even sure, Your Honor, the matter's ripe, because, as Your Honor noted at the last couple hearings, the abuse claims haven't been resolved yet. And so to have the claims that we're talking about that have been addressed in here -- the underlying abuse claims have to get resolved, then you have to go to the coverage case and determine -- make a coverage determination. And it's at that point in time you have an understanding about who's got claims against whom.

So they're asking you, basically, for an advisory opinion, assuming you have jurisdiction, which we don't think you do, and assuming you could do it through a plan, which we definitely do not think you have the power to do.

We also have a right to a jury trial. So the notion that all these things are going to get wiped away from 200-plus entities at the end of January through a plan is just -- it's fictional. It's not going to -- it's unconfirmable as a matter of law.

But even if you get past those arguments, I'm not sure -- on the anti-subrogation argument that they put in their -- on their -- under New York law, it's premised that everybody that's getting a release is a part of the insured -- of their additional insureds. We don't even think that's the case. We do think there are entities that are not insured under our policy. So I don't -- the factual premise, I'm not even sure is true.

It also doesn't account for intentional conduct. I'm not saying anybody -- I mean, we're all professionals, but to release us from what someone may do in the future that's intentional -- it doesn't account for that either. We can come up -- if Your Honor wants a brief on it -- but I was walking -- so I was thinking about the structure and their arguments and what their solution is. It's inconsistent with trying to get a quick resolution and an exit from bankruptcy.

And if you look at 8.83, which is denial of coverage as sole remedy, it says, "Notwithstanding anything to the contrary above an 8.82, the sole remedy of a non-settling insurer for the failure of the Diocese or organized Diocese or participating parties to satisfy their obligations after the bankruptcy -- after the confirmation shall be limited to asserting any defense to providing insurance coverage under applicable -- under the applicable policies." And we'll stop with that.

And then it goes on to say -- and then it's kind of -- I guess it's disjunctive. And then, "Nothing in the plan or any acts or admissions by the plan proponents and their related persons" -- that's pretty broad -- "as part of the case, can't serve as a basis for granting affirmative relief against those parties."

Now, putting aside the Purdue issues for a moment, our policies -- imagine this is not the Diocese of Syracuse; It's a basic commercial case in front of Your Honor. And you have a contract. There's -- the debtor has a contract with a non-debtor party. And the debtor can assume that contract, it can reject that contract, it can assume or assign it. Or if it's non-executory, it can assign it under 363. Those are basically the options of the parties. Imagine if the debtor would come to you and say -- as to a contract, not -- like, here's the language we want to -- how we're going to treat the contract. It's unconfirmable. You can't do any of this. And the law -- There's no difference -- there -- the Bankruptcy Code does not distinguish an insurance policy from any other contract. And I think that gets lost in this plan. There's lots of provisions in this plan about what to do with insurance. It is a contract. So the notion that you can put language in here that -- it just -- it's not confirmable.

THE COURT: And I think I addressed that with Mr. Donato earlier, that I wasn't --

MR. WINSBERG: Yeah.

THE COURT: -- I wasn't going to approve that.

MR. WINSBERG: Yeah. I -- yes, Your Honor.

THE COURT: The insurance policies and the law are what they are, in another form, for another day.

MR. WINSBERG: That's correct, Your Honor. You know, if you go to page 84 on the exculpation -- I think there was an argument in their brief about -- that it's not really a release, or something to that effect. I read it late. I apologize. I'm running on fumes today, Your Honor.

THE COURT: I get it, yeah.

MR. WINSBERG: But it starts off with, "From and after the effective date, none of the exculpated parties shall have or incur any liability for any claim." That sounds like a release to me. It's kind of like the -- what Purdue talked about. So -- and "Well, it's not a discharge, it's something different." Well, no, it -- a spade's a spade. You can call it what you want. You may not use the word "release." That's a release.

THE COURT: So, Mr. Winsberg, is it the insurer's position the exculpations are not permissible in any stretch or that they should be limited to the parties under the plan and the time frames as outlined by the U.S. Trustee?

MR. WINSBERG: We have not go far -- we have not gone as far to say they can never be approved, Your Honor. I mean,

that was the Highland Capital decision. The Supreme Court denied cert on it after Purdue.

THE COURT: Uh-huh.

MR. WINSBERG: So they left the law on the land, at least in the Fifth Circuit. And our perspective is you could have an exculpation, but it's got to be very limited, and it's certainly got to be limited to estate fiduciaries. And I think that's what we said in our brief. I don't think we took the position that they're per se invalid. They just have to be paired back.

THE COURT: Thank you.

MR. WINSBERG: Yeah. There was an argument in -- about the judgment reduction clause, something that -- I'm going to have post-traumatic stress disorder about judgment reduction clauses; it's been my life for the last month. But if you look at 12.5.2, which is -- Mr. Donato is correct -- there is a judgment reduction clause. This deals with settling insurers. This deals with -- Your Honor, has the power -- and we briefed this in front of Judge Glenn -- you do have the power under 363 Sale -- 363(f) is the statutory source that can give you authority issue, a supplemental insurer injunction. And we didn't object to the supplemental insurer injunction in this plan because that is the law. And there's a case out of the Eleventh Circuit called Bird Global that talks about this issue. It's not a Purdue issue to do a buyback. Under 363(f),

You can do that and issue a supplemental insurer injunction. There's an issue how far that injunction goes. The U.S. Trustee in the Southern District has objected to it, and Judge Glenn has cited to the Manville decision about how he feels about how far the injunction can go, about what can be enjoined and what cannot be enjoined, which turns on whether a claim is really estate property or whether it's really somebody's individual claim.

And so we don't take issue with that. And we don't take issue with the judgment reduction clause, at least for today, because it only applies to settling insurers, and we didn't object to it. So the judgment reduction clause is fine, but it doesn't fix the issue because it doesn't apply to the participating parties; it only applies to settling insurers. And that's why we didn't object to it -- or it doesn't deal with it.

The last part I would say, Your Honor, is we really can't understand that this is the path that's going to be pursued if the stated purpose is to get money in survivors' hands. And I have sat quietly over the last couple of hearings. I've heard some pretty, you know, incendiary things said about my client and about other clients. And I would just note, I don't want to impugn anybody's integrity, and I'm not going to do that. I will just state in my place that we have now settled two Diocese cases. We have on file a structure in

front of Judge Glenn that works. And the insurance program here is the same identical insurance program in Rockville and in Rochester.

So rather than go back and forth about who said what, I would just ask the Court to consider the facts: that we're not into delay, we're into constructive solution. This is not it. And we need to go -- that's why I filed the mediation letter, and Mr. Elsaesser agrees with me. We all agree, it needs to go through mediation, because this plan to go forward -- even if Your Honor were to confirm it, there are significant legal hurdles that it's going to face, whether in this Court and in the other Court, and upon appeal.

So with that, Your Honor, we respectfully submit the disclosure statement should be denied or substantially modified before it went out. Otherwise I'm happy to answer any questions Your Honor has.

THE COURT: No, I think that's it.

MR. WINSBERG: Thank you, Your Honor.

THE COURT: Thank you, Mr. Winsberg.

MR. ROBERT KUGLER: Your Honor, If I could address one thing that Mr. Winsberg said. And I know he was speaking hypothetically about his PTSD, but among my constituency is people suffering real PTSD, and it's easy to be colloquial and whatever about it, but it's not appropriate, given the constituency I have.

MR. WINSBERG: I didn't mean to say it that way, and I apologize if it came out that way.

THE COURT: Certainly.

MR. WINSBERG: I have utmost respect and -- for the lawyers in this case, and I'm sorry if I -- if it offended anybody. I didn't mean it that way.

THE COURT: Thank you, Mr. Winsberg.

MR. WINSBERG: Okay.

THE COURT: And the Court certainly didn't take it that way.

MR. WINSBERG: Yeah.

THE COURT: But certainly, duly noted.

Thank you, Mr. Kugler. Thank you.

MR. ROTEN: Russell Roten for London Market Insurers. First of all, Your Honor, we would also incorporate the previous objections we made to the previous plan; otherwise, we'll waive them if we don't. And that's why we make the same ones over and over again.

THE COURT: Understood.

MR. ROTEN: And we join in the points that Interstate made, and I'll try not to repeat anything they said.

Your Honor, there's -- in my view, there's kind of a negative feeling that's coming into this case in the last two or three hearings. There have been negative comments about my clients, LMI. And there have been negative comments generally

about the insurers and what our objectives are and all that sort of thing. And I think that's inappropriate.

The insurer's not responsible for any delays in this case, Your Honor. We are here -- we didn't bring this case. We're here defending our contractual rights. If there's a -- if there's a delay caused by us defending our contractual rights, it's a responsibility of the people who are attacking our contractual rights. It's not our responsibility. We have the right to defend ourselves.

Your Honor, we -- the insurers didn't do anything to the abuse victims. The insurers didn't have any relationship with the abuse victims. That was the Diocese, not the insurers. The insurers have a relationship with the Diocese, and it's regulated by the insurers' contracts. And I'd like to bring the focus of this back to those contracts. That's why the insurers are here. It's what the contract says. If there are no insurance contracts, we're not here. We don't have any independent duties to anybody.

So the insurers did not agree to guarantee the conduct of the debtor, no matter how egregious or how horrible or how many damage -- how much damages it caused. We didn't agree to do that. And twice this morning, there were statements that the insurers owed money to the abuse claimants. We don't have any relationship with the abuse claimants. Our relationship is with the Diocese, and it's governed by the

contracts.

Another thing that really bothered me today, Your Honor, was when the debtor said all the insurers want to do is keep the money in their pockets. And I want to -- I want to deal with that. We settled with the Diocese years ago. The Diocese and all the insurers agreed that we would buy back our policies, that we reached a final number. We all talked to the people we wanted to talk to. We had a deal. The -- these abuse claims could have been paid years ago, but the debtor reneged on that deal.

We've been trying to -- we've been trying to settle for years, Your Honor. And we've settled a lot of cases. We've settled -- I just -- Mr. Elsaesser mentioned one, in Helena. We've settled cases in St. Paul, Minneapolis; Winona; Portland, Oregon; Wilmington, Delaware; Harrisburg, Pennsylvania. We got the Rochester case settled. We got the Rockville Center case settled. We don't have all the paperwork done in Rockville Center; I've spent the last week and a half doing that. And we found a way in that context to get around this problem.

But it is in our interest to settle these cases. It's -- we don't want to keep the money in our pocket. We want to settle, pay the money, get the money to the victims of the abuse, and get out of here. That's why we're here. And it's not right to say that we're the ones causing the delay or that

we're responsible for this. It's not right. I'd like to get that out of the discussion, and deal with the Bankruptcy Code and that sort of thing.

Our objections, Your Honor, are based on the non-confirmability of the plan. I'm not going to go through everything that's in our objections. But Your Honor's familiar with how our insurance policies work. I think you've heard that over and over and over again. We pay ultimate net loss. After the debtor does everything, they send us a bill; if it's covered, we pay our shares.

The debtor has to comply with the conditions precedent to settlement, or we don't have any obligations whatsoever. There are a number of conditions precedent to settlement. The debtor has to defend the cases. And initially, we couldn't discern from the plan whether the debtor was actually going to defend. We were objecting to Your Honor that we couldn't tell who was going to do what.

Under the plan now, it appears that the debtor will defend, but the cost of the defense is going to be reimbursed by the trust, up to a point. And the -- there's a reserve fund set up to do that. And when the reserve fund runs out, then nobody's going to be defending. And the plan -- the debtor has asked you to exonerate them from any liability, them and the trust -- if they just breach their conditions to coverage, and they're off -- completely off the hook.

Your Honor, I would agree with what Your Honor said earlier about limiting the remedies that Mr. Winsberg just discussed with you and Mr. -- excuse me -- Donato discussed with you earlier. The same idea applies here. This is a insurance contract interpretation issue. It's a State Court issue. It's a jury trial issue.

Another problem, Your Honor, with this plan is that the payment for liability and defense costs of the non-participating abuse claims is not allowed; it's only paid up to the amount of the SIR. And so with respect to those claims, which presumably will go into litigation, it just, on its face, eliminates any duty to defend and pay defense costs.

THE COURT: I'm sorry, Mr. Roten, would you repeat that, please?

MR. ROTEN: It's the non-participating abuse claims. And there's no duty -- the plan allows the debtor not to pay the liability and defense costs. They just pay up to the limit of the SIR.

There's also a concept in the plan, Your Honor, where if the trust suspects that the debtor is not going to perform its conditions precedent to coverage, that the debtor can file a lawsuit, and they can litigate that here. And what I would suggest, Your Honor, is that is a classically collusive lawsuit. They would litigate that neither one of them has to pay anything; they would agree on that. And they would achieve

the same illegal objective they're trying to achieve by saying they don't have any liability if they don't perform under the policies.

I also agree with Mr. Winsberg -- the judgment reduction clause has nothing to do with any of these issues.

Another problem, Your Honor, is the -- part of the plan -- a crucial part of the plan is an assignment of the participating parties' property interest, under the LMI policies to the trust. And that's not property of the estate. And this Court does not have the jurisdiction to allow that or require that. That's something -- somebody's got to do on their own. And the Bankruptcy Code allows the Court to assign insurance policies of our property -- of the estate under certain conditions. But those -- that ability to do that doesn't apply if it's not property of the estate. And all of the participating parties' assignments are prohibited by the contract itself. So the policies say they can't assign without permission. We're not giving permission; so there's no vehicle for those policies to be assigned. So the participating parties' contribution cannot be a part of this plan. And it's hinged $50 million on those contributions, and it can't happen.

Your Honor, I wanted to touch on the allocation of liability argument that Your Honor went into this morning. And the response was, Well, it doesn't matter; it doesn't affect the insurers. Well, their allocations involve the

participating parties. If their policies can't be assigned, and there's no money coming in, or their participation is unclear, then this allocation mechanism could affect how claims come to -- through to the insurers for coverage. So it potentially affects the insurers, and then, we think it's inappropriate.

We -- the Trustee mentioned that the plan treats consenting and non-participating abuse claimants differently; so I won't get through that -- arguing that.

We oppose the attorney-in-fact argument, Your Honor. It's in our brief. We don't think the Committee can act as attorney-in-fact. There are conflicting interests. The Committee represents all the unsecured creditors, and we don't think that it's appropriate for them to do that. And one of the fundamental problems you've heard from me, Your Honor, for years now is the Committee is not doing anything to get the invalid claims out of this. The debtor and the Committee are both happy to pay invalid claims. We're trying to object to those claims. The plan proponents don't want us to. And in the plan -- in this plan, it says that once the plan's confirmed, we can no longer object; only they can. So when they were talking this morning about, "Well, let's put that off; we'll deal with that later" -- that's a little bit dishonest maybe.

THE COURT: Mr. Roten, wouldn't you agree that

pursuant to the allocation protocol, there's not to be payment on duplicative or fraudulent claims?

MR. ROTEN: The allocation protocol should not pay fraudulent claims.

THE COURT: I believe that's in there.

MR. ROTEN: The -- and, Your Honor, the -- there's a conflict of interest that we pointed out in our briefs of the Trustee. The Trustee is taking the money that comes from the debtor and using that money to pay the claimants, and they have a fiduciary duty to those claimants. At the same time, they're taking the same fund, reimbursing the debtor for opposing those claims. It's a direct conflict of interest. We think it's inappropriate; we think it's inappropriate under New York law.

We have some other arguments, Your Honor. Some are pretty specific in their wording issues and things of that nature, but those are the main arguments we want to make. Does the Court have any questions?

THE COURT: No, I've asked them as we went on.

MR. ROTEN: Thank you.

THE COURT: Thank you, Mr. Roten.

Are there any other parties who wish to be heard in opposition to the motion to approve the disclosure statement?

Anyone on the phone who wishes to be heard?

MS. RUBEN: Yes, Your Honor. This is Samantha on behalf of Travelers on the phone. First, I just want to state

for the record that we join in the arguments in -- of the other insurers that have spoken today. And like the other insurers, we want to incorporate our previous objections to the prior versions of the disclosure statement.

Second, I want to discuss a few points. And I won't repeat arguments because I think counsel for Interstate and LMI did a good job of hitting the high notes. We understand that the debtors want to move forward and finalize the disclosure statement and plan and eventually provide recovery to survivors. But from our perspective, there's still remaining issues in the plan, including many that affect the insurers, including Travelers. And we're certainly not trying to delay here or avoid payment, but we do need to make sure that our rights are protected. And I want to reiterate that we're willing to work with the plan proponents on those issues and, you know, remain open to discussion.

That said, I want to raise one point on the participating parties' contributions, which we've discussed in our objection. We agree with the debtors, as they point out in their joint omnibus reply, that the question is whether the participating parties have provided consideration or not. And that's on page 23 at Docket 2281. But where we see an issue is it's impossible to tell, you know, what, if any, each participating party has individually contributed as consideration. We understand there's a pot of money they're

contributing, but you know, is each participating party contributing money?

And among other things, the Supreme Court said in Purdue that the Sacklers needed to put everything on the table to receive a release. And as the plan stands -- as the disclosure statement stands, it's unclear that the participating parties are doing so. And we don't believe that contributing liabilities, like potential insurance claims, et cetera, would be considered. But that's all for now, Your Honor.

THE COURT: Thank you.

Is there anyone else on the phone who wishes to be heard?

MR. BANKER: Hi, Your Honor. David Banker, Womble Bond, on behalf of National Catholic Risk Retention Group. We had filed a limited objection enjoinder in certain of the other insurers' objections at Docket 2263. We certainly don't need to reiterate any of the objections that were asserted today, but we certainly wanted to note that we were one of the two insurers that had settled -- or we thought it settled with the with the debtors as well as with the Parishes, Committee, other parties.

Regrettably, because of the Purdue decision, that kind of was thrown into flux; the settlement agreement hadn't been finalized, and, certainly, with regards to the Purdue

issue, other issues were thrown into play. We certainly want to throw out there that we are -- you know, we put out a round number that was supposed to resolve all issues and allow parties to walk away. With Purdue, That seems to be in question. But we're ready, willing, and able to settle with the amount that we that we put out there, and we have a settlement agreement that seems to be almost done. So, you know, we're here, we're waiting and we're willing to talk with the relevant parties and see if we can figure out something that allows everyone to finalize the deal that we previously agreed to.

THE COURT: Thank you.

Is there anyone else?

(No audible response)

MR. BANKER: Thanks, Your Honor.

THE COURT: Thank you.

Is there anyone else on the phone who wishes to be heard before we turn back to the courtroom?

(No audible response)

THE COURT: Okay. Hearing none.

I believe Mr. Roten wanted to make one last point, and then we'll turn back to the plan proponents.

MR. ROTEN: One clarification in my argument, Your Honor. That was the Diocese of Rochester case that we had settled, and the debtor decided not to go along with that

settlement, and then we went back into the delay of the case.

THE COURT: Thank you.

MR. ROTEN: So my apologies.

THE COURT: Certainly.

Any other opposition?

(No audible response)

THE COURT: Hearing none.

Mr. Donato? Mr. Kugler?

MR. DONATO: Your Honor, I'll have Mr. Walter address the balloting issues.

THE COURT: Certainly.

MR. WALTER: Thank you. Grayson Walter, Your Honor, again, on behalf of the Diocese. Just a couple points in response to the U.S. Trustee's position, again, on opt-in versus opt-out.

The U.S. Trustee got up here and said, you know, based on the Smallhold and the Tonawanda decision, you have to have -- you absolutely have to have an affirmative indication of consent. She said that is binary. Neither of those decisions, respectfully, require that. Your Honor, I think what the U.S. Trustee is really arguing to the Court is that in the absence of separate authority under the Bankruptcy Code, we need to default to state law provisions to fill in the gap and determine what does or does not constitute consent. We already -- I already argued before that I think some of the

prior Second Circuit case law still applies, but even under the U.S. Trustee's construct, there are elements of state law that would allow us to impute consent even without this opt-in process.

And again, I cited to the -- we cited to the SunEdison case as well as the Russell v. Raynes Associate case for proposition that -- for the proposition that where there is a duty to respond to an offer, under New York law, you can impute consent -- you can impute acceptance of that offer if -- in the face of silence, under appropriate circumstances. Again, building on Judge Buckeye's decision in Buffalo, where you have a committee operating as an agent for all claimants and negotiating on their behalf, it is appropriate to assume that consent in the absence of an affirmative objection.

And none of the cases cited by the U.S. Trustee countermand that. They focus on what is admittedly the more usual scenario, where -- with a contractual formation: We have an offer and an affirmative acceptance. But they don't preclude this Court from imputing acceptance based on silence in the face of a duty to accept.

Moreover, to the extent that the U.S. Trustee suggests that the Tonawanda Coke decision does not actually address the amount being paid for the release, I think that's just incorrect. Your Honor, the -- just reading from Judge Buckeye's decision, he says, "Any payment under the plan serves

as consideration for pre-petition obligations. No further consideration is given on account of the separate liabilities of the non-debtor beneficiaries through the releases." Indeed, the plan contemplates the same distribution, whether or not a creditor opts out of the release -- very different than our scenario. "Essentially, creditors are being asked to give releases to third parties for no consideration. Consent for this arrangement is therefore governed by the following provisions of the New York General Obligations law." And there, he quotes the section of general obligations law that says, "Where there's a release for no consideration, it has to be in writing." That is not -- that is not contradictory to what we're saying. We have releases in exchange for $50 million of consideration, and it -- releases that were negotiated by the Committee.

Your Honor, the U.S. Trustee made the provision -- the argument that survivors in this case, by and large, are represented by sophisticated lawyers, who can explain the plan provisions and counsel their clients to opt in as easily as opt out. Your Honor, we think that cuts both ways. And as the Committee has previously argued, we're dealing with a population of people that are working under, you know, sometimes severe limitations, and we don't think it's appropriate for the U.S. Trustee to require those folks, if they would prefer to remain silent and go along with the flow,

to step in and engage with this process at all. If they can work with their counsel, they can get advice. And if they truly want to oppose these releases, their counsel can do that on their behalf. But we think it's inappropriate to require them to step forward and do that as an affirmative step when the Committee has been operating on their behalf all along here.

Your Honor, I would just similarly note that the Smallhold case, similarly to Judge Buckeye's decision in Tonawanda, simply assumes that that default judgment is the only way to get to implied consent. We would submit under New York law, there's a another path to get there, and that silence, under appropriate circumstances, where there's a duty to oppose, is tantamount to consent.

Barring any questions Your Honor has, that's all I have.

THE COURT: I do. Can you address, please -- the Court shared very similar concerns with the U.S. Trustee in terms of the -- what I call the doomsday language and the placement of the opt-out on the class 5 ballot in terms of if you don't -- if you choose this -- and I have a couple questions on what they get in terms of the executive summary that we'll get to a minute -- but --

MR. WALTER: Sure.

THE COURT: -- if you choose this, not only do you

get virtually nothing, it's kind of, Would you like to get this great, happy recovery? Or if you don't, here's all the bad things that could not only happen with respect to you, and a reduced recovery --

MR. WALTER: Uh-huh.

THE COURT: -- but to also, you know, go against the whole plan and make sure that no survivors get any money.

MR. WALTER: Uh-huh.

THE COURT: So it's really a doomsday -- I read that ballot as a very doomsday scenario for a survivor out there trying to say, "Well, do I want to opt out?" Or "I don't want to opt out." And so that kind of goes to the coercion and duress. If you're going to convince the Court the opt-out is on consent, how do you deal with that language?

MR. WALTER: So, Your Honor, we're just trying to be honest with the people that are engaging in this process of what would happen if we have a significant number of opt-outs. Right? I mean, we have participating parties that are putting $50 million on the table. If they're not going to get the value of the releases that they've bargained for, they're not going to, you know, be able to move forward with the plan. And in that scenario, the plan may fail.

THE COURT: And going to the U.S. Trustee objection again -- and the Court had -- is there a number where that kicks in that's not being disclosed in the executive summary,

that there's -- if a certain percentage or a certain -- is that on a claim-by-claim basis?

MR. WALTER: No, Your Honor. We really don't have any good way of predicting that in advance. I mean, we don't know -- there may be a very limited number of claims that the Diocese and the participating parties would be limit -- would be willing to accept. But I think even that would require some negotiation with the Committee, and as far as the scope of what's being pumped into the plan and what the protections available for any protected party or participating parties who were being carved out of the third-party release are.

That being said, you know, every claim has different characteristics. Some are more meritorious than others. Some are meritorious but not -- don't present that large liability exposure. Some are insured, some are not. So that would have to be a decision that we would evaluate once the balloting is back. If we see that we have opt-outs, we would have to evaluate, you know, who they are, what the characteristics of their claim are, and whether the participating parties are still comfortable putting $50 million or some other number into this plan to make this plan work.

So, no, there's nothing that -- there's nothing -- there's no line in the sand that's been drawn that has not been disclosed to the Court. You know, our position is that this settlement was negotiated under the assumption that there was

going to be a full release of all abuse claims against both the Diocese and all participating parties. That is still the goal that we hope to achieve. And we think we will. We think we'll get a hundred percent or nearly a hundred percent survivor acceptance.

THE COURT: Thank you. That answers that.

This is probably more a question perhaps for Mr. Donato. But the way that I was reading the opt-out -- the non-participating opt-out claimants, they get a thousand dollars, and then their claim against the participant -- I'm sorry -- against participating parties is preserved; is that correct?

MR. WALTER: That's not all they get, Your Honor.

THE COURT: Okay.

MR. WALTER: So they get a thousand dollars cash in the barrelhead. They get the opportunity to pursue their claim against the participating parties, or whoever their non-diocesan defendant may be, in State Court. And they also have the opportunity to prove up their claim against the Diocese. So if they also succeed in proving liability against the Diocese, then they are entitled to share in the lesser of whatever the amount of judgment they get against the Diocese in State Court, or the amount that they would be entitled to under the allocation protocol, but limited to the percentage -- the $50 million that the Diocese is contributing. Right?

So if they had -- their claims will still get scored through the allocation protocol. And if their claim is assigned -- and I'm just using random numbers -- 30 points, and 30 points equates to a $300,000 payout, if they successfully litigate and establish liability against the Diocese, that they would be entitled to that amount of payout from the limited fund being contributed by the Diocese. They're not entitled to share in the settlement fund being put up by the participating parties because they've opted out of that. So that -- that's --

THE COURT: Okay. So that answers the Court's concern. It looked like they were being penalized that they weren't sharing in the other Diocese -- the settling insurers and all of those things. They're still being involved in that process.

MR. WALTER: So they're able to share in the amount being contributed by the Diocese, not -- if there are settling insurers -- again, in order to settle with the insurers, we need a release against those settling insurers. Right? People that are opting out are not granting that release. So we are not -- at this point, the plan does not provide for them to share in insurance settlement proceeds because they haven't agreed to participate in the settlement.

THE COURT: Okay. And were you -- I read the omnibus reply, that the plan does not extinguish or reduce the

non-settling insurers' contribution claims, if any. Is that -- did I read that correctly?

MR. WALTER: I believe that's right. I mean, so the -- we don't think they have any, in the first instance, but --

THE COURT: Whatever they are, they are, but --

MR. WALTER: Whatever they are, they are. I believe it simply -- I believe it would be run through that judgment reduction clause such that it would net out at zero, whatever they may be. So to the extent there is a contribution claim, I believe it would be whatever their liability to a claimant would be after they've gone through the liability phase of the trial and also the coverage phase, that that coverage liability would be reduced by the amount of their insurance contribution claim such that they're economically less in the same position. That's the intent, at least.

THE COURT: Maybe I didn't put the question correctly, because I just want to make sure -- so the plan doesn't extinguish or reduce the non-settling insurers' contribution claims, if any, through the channeling injunction regarding participating parties -- that that does not apply to the non-settling insurers? And I believe I'm taking that from the reply, but I just -- I was not clear on --

MR. WALTER: So, Your Honor, I -- could you say that one more time? I --

THE COURT: Sure.

MR. WALTER: -- just want to make sure I understand.

THE COURT: The plan doesn't extinguish or reduce non-settling insurers' contribution claims, if any, and that the channeling objection regarding the participating parties does not apply to them.

MR. WALTER: Your Honor, can I just consult --

THE COURT: Sure. I realize that's a very technical question.

MR. WALTER: Yeah, I -- and I did not author the response, so I --

THE COURT: Understood.

MR. BAIR: Your Honor could we take a crack at that?

THE COURT: Sure, absolutely.

MR. BAIR: Okay.

MR. WALTER: Thank you, Your Honor.

THE COURT: Thank you.

MR. BAIR: Good afternoon, Your Honor. Jesse Bair, special insurance counsel for the Committee. So before I get to Your Honor's exact question, I did want to touch on something that I think is important to the insurers' argument about the contribution claim.

THE COURT: Yes.

MR. BAIR: As I read their brief, they don't appear to be taking issue one way or the other with the opt-in,

opt-out framework. That's in Footnote 1 of Certain Insurers' omnibus objection. It says they're not taking a position on that. But what their brief says is that they have a problem with the treatment of their purported contribution claims because they don't have an opportunity to manifest consent one way or the other to that.

But they actually do in the plan, and that may be a misunderstanding. Under Section 12.2.2(b), the insurance companies have an opportunity to object to the plan, and if they do, they can opt out of having their insurance contribution claims channeled to the trust. So if they don't want the benefit of the judgment reduction clause -- and I think it is a benefit; it applies automatically -- they don't have to have that. They can opt out, and they can preserve what we believe to be non-existent contribution claims against additional insureds. So they have a way around it. If they want to opt out, they can object to that plan on the basis, and under section 12.2.2(b), they would preserve their insurer contribution claims, if any.

THE COURT: Thank you. I assume none of these cases have ever provided an insurance company with just a generic opt-out form as opposed to requiring them to actually file a confirmation objection?

MR. BAIR: What was that, Your Honor?

THE COURT: I said I assume there's never been a case

where they send a little opt-out -- even though it's not a ballot -- to an insurance company to allow them to check the box as opposed to an affirmative obligation to file an objection?

MR. BAIR: I --

THE COURT: Never happened?

MR. BAIR: I am not familiar with one, but obviously --

THE COURT: These are --

MR. BAIR: -- they're uniquely situated.

THE COURT: Yeah.

MR. BAIR: They have excellent counsel, who are here today in the room. They're already, essentially, objecting to this; so I'm sure they'd be able to, you know, manifest that lack of consent if they needed to.

THE COURT: Understood. So -- understood and agreed.

MR. BAIR: But -- thank you, Your Honor.

THE COURT: Let me just check my notes here. I think that answers my specific questions, although I do have some additional issues.

Mr. Donato, did you want to address any of the objections?

MR. DONATO: Listening to a lot of the carrier objections -- as I indicated, we already heard these, and you've already kind of ruled on them. But now I understand

they put it in this in order to preserve the record or something like that. They might have put a note in there so I didn't spend so much time reliving all this stuff.

Mr. Winsberg thinks it's a good idea -- let's just put all the Parishes into a Chapter 11. So as you observed, and while we are hoping it doesn't have to happen, the Rockville Center case is setting that up. But as you observed, they have rapid pre-pack rules. These Parishes are supposed to be in chapter for about 48 hours. Whether that actually happens or not is a different issue.

But of course, in Rockville Center, everybody's kumbaya, right? There's a global settlement. So all this is -- I mean, you know, as Trustee's objective -- but as far as creditors, participants -- everybody's on the same table, you know. And we're involved in the hearing, so they're all sitting at the same table. So there's quite a bit of difference. And just to come up here and say, "I got an idea. Why don't you just flush all the Parishes?" -- respectfully, that's a -- for this argument is inappropriate at this time.

THE COURT: While we're on that topic, Mr. Donato, how do you respond to the situation -- or the issue raised in terms of, Well, (A) I don't believe that we have an updated list of participating parties. I think that was actually in accordance with a third amended plan; so the record is missing that. Everyone's kind of going under the assumption it would

be the same list -- that there's been no disclosure, even though Purdue obviously put a wrinkle in that -- that there needs to be a disclosure of the contributions of those hundreds of participating parties who are supposed to be getting a release so a consideration analysis can be done -- and the fact that their insurance -- I can't direct that their non-541 property gets assigned to the trust.

MR. DONATO: Right. Okay. So let's kind of unpack that because we had -- you had three different questions, I think.

THE COURT: I think so too.

MR. DONATO: Okay. So, okay. So your first question -- let's just go over that, just so I can make sure I answer it. What exactly are you asking me?

THE COURT: I assume you're going to file an updated list or --

MR. DONATO: Yes.

THE COURT: Okay.

MR. DONATO: So we have spent quite a bit of time finalizing the list. It is substantially the same. You know, what happens in these things -- and you have like closed Parishes -- you know, Parishes that were merged, you know, 40 years ago -- you know, that kind of thing. And so there has been a challenge from the standpoint of tracking the history and making sure that we got all the proper protected parties on

the list. We have, I believe, completed it. It absolutely will be filed well before any solicitation so that everybody will know all of the parties that will be on the Exhibit A -- protected parties. But I'm happy to report, it's substantially the same as the prior one that we filed, I think, with the third amended plan.

THE COURT: And then there was a indication that there should be a list of what everyone's contributing, especially if there's going to be any type of a contractual analysis --

MR. DONATO: Right.

THE COURT: -- under New York state law.

MR. DONATO: I don't think it's relevant anymore. I think it's simply: What is the proposal and what did the -- each of the survivors do in regard to their right to accept or not. So it's binary. I think -- consider -- when I read Travelers' objection, I, frankly, thought they were talking about, you know, pre-Purdue time. I don't think -- at one time, we were all geared up to do that because we -- absolutely. And we -- as I said, I think we're all going to be here today for the confirmation hearing.

I don't think that's relevant anymore. I think that the plan sets forth the proposal. The survivors make their determination. It's either up or down. If they -- you know, they -- either participating or not participating. I think

we're -- I think consideration is not relevant anymore.

THE COURT: Okay. And -- well, I've forgotten my third question. Oh, the assignment --

MR. DONATO: So did I.

THE COURT: I know. Sorry. The assignment of the --

MR. DONATO: Yes.

THE COURT: -- participating parties' insurance rights, claims, policies, whatever the --

MR. DONATO: Yes, yes, yes. Okay. So this is one of those redos. We've covered this only about 15 times, and Mr. Roten knows it. We're not assigning the policies; we're assigning the right to the claims. Once the claims are -- once they are liquidated, we have the ability -- there's no question -- then we have the ability to assign those claims. We're not assigning the insurance policies. The insurance policies are not executory. You made that determination when you overruled this six months ago. So same answer today.

THE COURT: But those will be voluntary assignments by the participating parties as opposed to the Court blessing those without jurisdiction over --

MR. DONATO: If there's a -- if the Court has an issue concerning whether it has the authority to do so, absolutely. Then it says -- it's a contractual transfer. I totally agree.

THE COURT: Thank you.

MR. DONATO: So I don't really have much else to say. I mean, I think, frankly, whatever issue I wrote -- I talk about, you'll have already heard 25 arguments on it. I just point out that regurgitating old objections is just not appropriate this -- at this time. And that's really all I have. It's time. January '21, '22. It's time. We've got to go to confirmation. Thank you very much.

THE COURT: Thank you. Sorry, Mr. Donato. One more question.

MR. DONATO: Yep.

THE COURT: Is it the debtor's intention that the payment -- that the liabilities and defense costs for non-participating abuse claims are being paid from the post-effective date cost reserves?

MR. DONATO: I have to check on that.

THE COURT: Okay. I don't think that's clear from the -- all right.

It looks like the Committee may have an answer to that. Go ahead.

MR. DONATO: Okay. Good.

(Counsel confer briefly)

MR. DONATO: Go ahead.

MS. CHAMPION: You want me to get it? I'll take a stab at answering that.

(Counsel confer briefly)

MR. WALTER: Your Honor -- Your Honor, yes. The -- and I've -- I'm going to forget the name of the -- or the fine term, but I -- you -- post-effective date --

THE COURT: Cost reserve.

MR. WALTER: -- cost reserve -- is it --

MR. WINSBERG: I think it's just for coverage.

MR. WALTER: -- is intended to cover -- yes, any pre-conditions to coverage that need to be satisfied as we go through with the litigation post-confirmation.

THE COURT: Okay. Thank you.

MR. DONATO: That's all I have, Your Honor. Thank you.

THE COURT: Thank you.

MR. WALTER: Thank you, Your Honor.

THE COURT: Ms. Champion.

MS. CHAMPION: Thank you, Your Honor. Erin Champion for the United States Trustee. I just wanted to clarify something that Mr. Walter raised with respect to the Tonawanda Coke case and the general obligations law and the State Court case that was cited in their papers. Your Honor, the point of Tonawanda Coke is that you have to look to state law. And state law requires acceptance of an offer. And if you don't have a duty, which -- a duty to speak -- and that's the distinction here. In this case, there is no duty to vote or a duty to speak; so you can't have acceptance by silence. The

case that they cite, Russell v. Raynes Associates, says, "Although generally intent to accept an offer may not be in inferred from silence. Party silence will be deemed an acquiescence where he or she is under a duty to speak."

But we don't have that here. And that's really kind of the point of Purdue also, because if a non-voting creditor can be bound by a plan vis-a-vis debtor, that's under the Code. But nothing in the Code points to silence or failure to vote as sufficient to adjust property rights between a non-debtor and third parties. So I think that's the key distinction that I just wanted to make with Tonawanda Coke and the case that was cited by Mr. Walter and the general obligations law. There really is no duty here to vote.

THE COURT: Thank you.

MR. WALTER: Your Honor, may I just address that briefly?

THE COURT: Certainly. And then we'll hear from the insurers.

MR. WALTER: Your Honor, the whole point here is that where you have an agent acting on behalf of its principal, and that agent has acted and has essentially assented through the Committee to these releases, that it is incumbent upon the principal to then take an affirmative action to reject that action by the agent. And that is the duty here. That's our argument there. Thank you.

MR. WINSBERG: Real briefly, Your Honor. Harris Winsberg on behalf of Interstate. I appreciate Mr. Bair's pointing to that provision. I had passed over that originally, that 12.2.2(b), but then I went back and I looked at it, and I think we did look at this provision. And maybe it's an issue of drafting or not, but it -- that provision references the injunction -- 12.21 and 12.13 is what it references. But it doesn't reference, among other things -- and again, this is not exhaustive -- 12.7, which is a release for channel claims. I just wanted to point that out to Your Honor.

THE COURT: Thank you.

MR. WINSBERG: Thank you.

THE COURT: Is there anyone else who wishes to be heard?

(No audible response)

THE COURT: Anyone on the phone?

(No audible response)

THE COURT: Okay. We're going to take a 20-minute recess, and we will regroup. It is about 2:50 right now; so we will regroup at 3:10.

THE CLERK: All rise. The court will take a brief recess.

(Recess at 2:47:19 p.m./Reconvened at 3:12:23 p.m.)

THE CLERK: All rise. You may be seated.

MR. ROBERT KUGLER: I think the sound is muted again.

THE COURT: The sound is muted. He thinks the sound is muted.

THE CLERK: Continuing with the Roman Catholic Diocese of Syracuse, New York, Case 20-30663.

THE COURT: Thank you. After the brief recess, the Court is going to take the matter under advisement and have a telephone conference one week from today, at which time the Court will issue its decision and also be prepared to have a written decision in that regard at that time as well.

The hearing -- that's a regular Chapter 7 and 11 calendar in the morning, and we can do that at one o'clock in the afternoon telephonically only; so there's no need for anyone to travel, because there won't be any further oral argument. It will just be for the Court's decision in that regard, and then we'll figure out what our next steps when the Court issues its decision. Thank you.

Was there anything further?

Oh, Mr. Kugler?

MR. ROBERT KUGLER: Your Honor there's -- earlier, I mentioned the desire of Dr. Kevin Braney to share kind of the survivor perspective of the Court. Is this a good time now? I know we're all tired.

THE COURT: Well, it's not that it's not a good time. These proceedings are being recorded, and generally, then, the testimony would -- everybody would have to be live; there

wouldn't be any telephonic. The Court conference rules require that if there's actually testimony, that there's -- no telephonic appearances are permitted; it all has to be in person. So that was why I kind of hesitated before we circled around. I know, Mr. Kugler, we've had conversations about having some testimony in the context of the confirmation hearing, because those would be specifically in person, without telephonic appearances. And the Court just doesn't want to run afoul of any of the Conference rules, so to speak, but certainly understands that Dr. Braney is present, and obviously supports all of your presentation today.

And also, quite frankly, we haven't given the other side an opportunity if they wanted to weigh in on hearing that or not. There's a lot of differing views as to whether or not that should be permissible and the vehicle for that. So --

MR. ROBERT KUGLER: Yeah. I understand, Your Honor, and thank you for that. I just want to make clear, it's not really intended to be testimony. It's not meant to be part of the record. It's not meant to be evidence. It's not meant to be anything other than to help the Court and, frankly, all the parties understand the perspective of survivors at this stage of the -- but I'm not quarreling with your ruling.

THE COURT: Well, if it's not -- if it's not testimony and it's just in lieu of an affidavit in support -- or actually, it wouldn't even be an affidavit; that would be

somewhat testimony.

MR. ROBERT KUGLER: Yeah.

THE COURT: Does anyone have any objection to a few minutes from Dr. Braney?

MR. WALTER: We do not.

THE COURT: Any of the insurers? It's not for evidentiary purposes or --

MR. ROTEN: No, Your Honor. If -- we don't have objection.

THE COURT: Recognizing that it's not meant to be anything but a support of the disclosure statement approval.

Certainly. So you may call Mr. -- Dr. Braney.

MR. ROBERT KUGLER: Would you like Mr. Braney to sit up here?

THE COURT: I would. Yes, please.

MR. ROBERT KUGLER: Okay. We're still going to record this. Yes. This --

Yes, please.

(Participants confer briefly)

THE COURT: Did you have a prepared statement?

DR. BRANEY: Yes, I do.

THE COURT: Certainly. Please proceed.

DR. BRANEY: Thanks for the opportunity, Your Honor. I appreciate it. I know it's been a long day for everybody, and I'll keep my comments brief.

THE COURT: Thank you.

DR. BRANEY: You're welcome. Thank you.

First, I just want to acknowledge two things. One, this statement -- this brief statement that I'm about to read has had input from Kevin Lawrence, our Committee treasurer, and Chris Simons, vice chair as well. So they're reflective from our Committee, and I wanted to acknowledge that. And I also wanted to acknowledge as well that -- there's just two spots in here that I wanted to acknowledge they're reflective of my prior experiences as a survivor, not all specific to Bishop Lucia, who I found to be incredibly hopeful and compassionate and thoughtful.

So very briefly, obviously, I was sexually abused in this Diocese. I'm also a father of Jack, Ali, Trigg, and, Ethan, as I know many of my fellow survivors are as well, as parents, grandparents, and what have you. And this Committee -- I just wanted to take a moment to acknowledge your work and the work of everyone and all the professionals in this room and the unique position that's before us to resolve a really hard, complex bankruptcy case.

And I just as well wanted to acknowledge the fact that we're all here today because of the failure of leaders from multiple institutions all over Syracuse community. And they allowed it and enabled it, and the trauma that came from it to metastasize.

For the 400 creditors, we've been patient, but -- I know I'm not supposed to say this, honestly -- but we're tired. And we recognize everyone's a professional in this room and has a job to do, but there are survivors out there who can't even go to their mailbox for fear of what might be in there, because they haven't told their spouses or partners about their abuse, and that's why they can't vote. We're a little tired of all the processing. We recognize that's the job of the Court and the experts and the legal folks in this room. That's what you guys do, and you do it extremely well. As it's been said several times today, you're all brilliant and exceptional at what you do, and you are. But we're tired. And we just wanted to take a moment to step back and just name four things that I'll share, and then I'll be done.

Institutions are the building blocks of civil society. They're crucial to our well-being, and we depend on our government, courts, police, churches, schools, hospitals to protect us and enrich our lives. Betrayal comes when these institutions don't protect us from harm, or enable the harm. And it's never an individual. It's the institution that allowed it to happen. There's a lot of individuals who want to do the right thing. The unbearable pain and loss that I can't even quantify in this moment -- it's the foundation of this case, because we're all so different -- has been carried for decade after de decade, and it lives with all of our family,

friends, children, and neighbors.

A lot of people failed, and it's not -- I'm not here to talk about that. And I'm not here to talk about -- maybe someday we can talk about how -- and it doesn't just happen with the church, but at times, the victim becomes the offender. The real victim becomes the person who's putting forward a fraudulent claim or an invalid claim. And those words are hard to hear from the my own stories let alone the stories of all the people. And I'm fortunate to represent -- and I'll just kind of cut to the end of this, I guess.

The physical, emotional, and spiritual damage that's out there -- like I said, it's in our -- my brother, my sisters -- and I know my Committee members have talked about this, how it lives in our families and our friends and our neighbors. And that secondary trauma is pervasive. And I want to do these things without ever tearing up because I want a soldier on. But I -- when I'm in this room, I live in the present here with all of you, but I also live from in -- what happened in 1989 and 1990, when I was a student at Manlius High School and at St. Ann's Church. And I have been -- this is the first time after over a decade -- when I first met the Diocese to put forward a complaint in 2013 that I've had a chance to formally speak. So for that, I'm grateful.

Just please know that as you're thinking about calendars and relief and what people need, the Jesuit Catholic

Magazine wrote the following: "Known survivors of sexual abuse in childhood or adolescence are two to four times more likely to complete suicide. The likelihood of suicide is correlated to early sexual trauma, when the abuse is repetitive. And I just want to acknowledge the fact that the stuff that we're trying to hold on to as we get through this case and it runs its court (sic) is really painful, and it carries a huge burden on all of us. And for us, we're still working on finding the version of God that we all hold so dear, that is that protective factor in our lives that somehow some -- for many of us, we lost that.

And I'd -- the third thing was just to make mention of institutional courage. This is really harder than I thought it would be. I'm so sorry.

THE COURT: No apology.

MR. ROBERT KUGLER: You're doing good.

THE COURT: Yep, you're doing great.

DR. BRANEY: The commitment to seek the truth and engage in moral action, despite unpleasantness, risk, and short-term cost, is institutional courage. It's a pledge to protect and care for those who depend on the institution. It is a compass orientated to the common good of individuals and institutions in the world. It is a force that transforms institutions in more accountable, equitable, and effective places for everyone. It's my hope, it's the Committee's hope

that somehow all the institutions that are in this room today come together to help us move forward.

We will never be done with our drama. We will get better. I have complex PTSD. I've gotten a lot better, but it's still a part of my life journey forever, and it doesn't go away. And this Committee is proud of who we are. We've never talked about "I" or "me"; always "us" and "we." And we're Committee sometimes we think people haven't counted on. We're in this for the long haul. And if we have to move forward and find ourselves in a space in a courtroom where we have to start over -- maybe -- I don't know. I don't understand everything that's happened today. We'll do that. And it's not because of this Court. This is just a hard thing to do. It's a hard thread and a hard thing to do to get through this. And that's okay.

Many of us want to be in court, in front of a jury to tell our story. We're tired of being told that we lied and we made it up or whatever that might be, and we'd love to have the opportunity to have a jury hear our case. We're not afraid of the challenges that lay ahead. We're a resilient group, and we are determined to make our fellow survivors whole. We don't want them to feel hollow. And I'm not saying they do today. We're just tired. But that doesn't mean we're not resilient.

And lastly, I guess maybe two things. One is Marcus Aurelius once said, "Often, injustice lies in what we aren't

doing, not only in what we are doing." And we survivors have walked for a really time -- a long time with God alone while historically being shunned by our church and our community. And I know that's changing, but it's time to get to walk in the light. And if we need to fight more, we will. We will. But we don't want anyone to walk away from this journey that we've all been on feeling like they weren't seen, they're not whole, and justice wasn't served. So thank you. I appreciate your -- the opportunity to provide a brief reflection.

THE COURT: Thank you.

DR. BRANEY: Thank you.

THE COURT: Thank you very much. And thank you for -- to your council members as well, who contributed to that and who have participated both in person and on the phone through all these proceedings. I know that they can be very difficult, and certainly from a non-lawyer. They're difficult for the lawyers in the room --

DR. BRANEY: Understood.

THE COURT: -- who, as you said, do a wonderful job. And I can understand the frustration. So thank you.

DR. BRANEY: Thank you, Your Honor. I appreciate it.

MR. ROBERT KUGLER: Thank you, Your Honor.

THE COURT: Thank you, Mr. Kugler.

Is there anything else?

(No audible response)

THE COURT: Okay. So we'll have a telephonic conference at one o'clock next Thursday. I look forward to seeing -- speaking with everyone.

MR. DONATO: Thank you, Your Honor.

THE COURT: Thank you.

THE CLERK: All rise. Court is adjourned.

(Proceedings adjourned at 3:27:05 p.m.)

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C E R T I F I C A T I O N

We, KAREN K. WATSON and KAREN SCHOUEST, court-approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen K. Watson
KAREN K. WATSON

/s/ Karen Schouest
KAREN SCHOUEST

J&J COURT TRANSCRIBERS, INC. DATE: November 13, 2024